

CROSSING THE RIVER OF LAW: THE WOMEN'S PARTICIPATION IN
PEACEBUILDING AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF
CAMBODIA (ECCC)

by

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ABSTRACT OF THE THESIS

Crossing the River of Law: Women's Participation in Peacebuilding at the Extraordinary Chambers in the Courts of Cambodia (ECCC)

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This thesis focuses on the empowerment of women in the Cambodian legal system as participants in the Extraordinary Chambers in the Courts of Cambodia (ECCC) and as advocates of gender and human rights. These preliminary findings will lay the foundation for a larger dissertation, which will further explore the role of women as peace builders in post-conflict societies. The research highlights local applications of gender and human rights through the participation of female civil parties in a court of international standards (ECCC). International human rights conventions have been embedded in the Khmer Rouge Tribunal at the ECCC, allowing victims of Democratic Kampuchea (women in particular) to exercise their full legal rights on an equal basis before the law. For the first time, an ad-hoc court of this nature has been established to seek truth, justice, and reparations for crimes against humanity, including torture, starvation, forced marriage, mass killing, genocide, war crimes, and other crimes committed by former Democratic Kampuchea leaders from 1975 to 1979. Through in-depth interviews, transcripts of court hearings, and participant observations, my research has shown that the ECCC has been instrumental in localizing the global concept of human rights within the Cambodian court system. In the process, female civil parties have fully exercised their legal rights as participants in the court proceedings, providing a

comprehensive historical account that has been crucial to the prosecutions of Cases 001 and 002. Testifying before the court enabled these women to heal their wounds and forgive the accused, both of which are prerequisites for the achievement of peace and reconciliation within the country. Cambodia women have been agents of peace since the end of the conflict in 1979; through their participation in the ECCC, they have expanded their influence by playing a pivotal role in ending past impunity and ensuring that justice is served on behalf of the victims and survivors of Democratic Kampuchea. Their efforts in this regard have contributed significantly to sustainable peace in Cambodia.

Preface

For my parents

And

All survivors and victims of the Democratic Kampuchea Regime

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List of Abbreviations

ADHOC	Association des Droits de l' Homme au Cambodge (Cambodia Human Rights Association)
CEDEAW	Convention on Elimination of all Forms of Discrimination against Women
CIA	Central Intelligence Agency
CIHR	Cambodian Institute for Human Rights
CMDG	Cambodia Millennium Development Goals
CPK	The Communist Party of Kampuchea
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia
GBV	Gender Based Violence
ICTY	International Criminal Tribunal of Former Yugoslavia
ICTR	International Criminal Tribunal of Rwanda
ICC	International Criminal Court
IMT	International Military Tribunal
IMTFE	The International Tribunal for the Far East
KR	Khmer Rouge
KGB	The Committee for State Security (translated from Russian term)
KPRP	The Khmer People Revolutionary party
LICADO	La Ligue Cambodgienne pour la Promotion et la Defense des Droits de l' Homme (Cambodia Leagues for Promotion and Defense of Human Rights)
NGO	Non-Governmental Organization
PRK	People Revolution Kampuchea
S-21	Security Center 21
SCSL	Special Court of Sierra Leon

SGBVC	Sexual Gender Based Violence Crime
TPO	Transcultural Psycho-social Organization
UN	United Nations
UNTAC	United Nations Transitional Authority of Cambodia
US	United States of America

I. Chapter I: Introduction

A. Post-conflict Characteristics and Impact of Civil Wars on Women

During conflict and war, all factions conduct direct and indirect violence on civilians. According to Krishna Kumar of the Organization for Economic Cooperation and Development, at least 95 percent of the casualties in civil wars are civilians.¹ Even though the conventions of war forbid attacks on civilians and allow for prosecution in such cases, significant numbers of civilians are directly affected by war. Social unrest during times of war leads to population displacement, destruction, lack of security, disruption of lifestyle, and food shortages, all of which result in people seeking refuge elsewhere. For instance, during and after the genocide in Rwanda, almost two million Rwandans fled to the neighboring country of Tanzania. Thousands of Cambodians also fled to refugee camps in Thailand to escape from the Democratic Kampuchea regime. Other massive displacements of population have occurred in Bosnia and Herzegovina, El Salvador, Georgia, Guatemala, and are currently underway in Syria. The majority of refugees are women and children; however, we also observe the traditional roles of men and women changing to adapt to the situation.

Women have also participated in the perpetration of civil war. In El Salvador, twenty-five percent of women joined the Farabundo Marti National Liberation Front; in Bosnia and Herzegovina, Rwanda and Cambodia, women participated in crimes such as genocide and ethnic cleansing.² Like men, women can be victims as well as perpetrators in civil war. However, war is often an attempt to destroy infrastructure, urban facilities,

¹ Krishna Kumar, "Civil Wars, Women, and Gender Relations: An Overview," in *Women and Civil War: Impact, Organizations and Action*, ed. Kumar, Krishna. (Boulder, CO: Lynne Rienner, 2001), 6.

² Kumar, "Civil Wars, Women, and Gender Relations: An Overview," 6.

and rural agriculture, all of which contribute to the foundation of civilian life. The impact of such destruction directly impacts women and children, causing starvation and malnutrition.³ Usually, during war or conflict, women and girls become most vulnerable because of their traditional social and familial roles, attachment to family, division of labor, and tendency to be unarmed. The fear of violence and sexual abuse are a constant threat, placing them at a social and economic disadvantage.⁴

In the aftermath of genocide and civil war, distrust among former neighbors who became enemies makes it difficult for women, many of whose husbands were imprisoned, to return to their home village without feeling discriminated against and stigmatized. The conflict severs the social bonds upon which women depend within the community, especially if they have to move to a new village where they have no ties and suffer economic hardship. The suffering associated with separation from their loved ones, forced migration, sexual abuse, starvation, extreme violence and cruelty leaves severe scars on the psyches of both men and women. However, the research of Krishna Kumar reveals that the number of women traumatized by such conflicts is incredibly high in all case studies.⁵ For instance, women in Bosnia and Herzegovina, Rwanda and Guatemala have all experienced very high levels of stress and anxiety in their lives, with symptoms of listlessness, chronic fatigue, anguish, and depression.⁶ Women and men usually internalize the trauma in order to survive, which clearly shows a notable degree of resilience. Internalizing the trauma can facilitate survival; however sometimes, the

³ Kumar, "Civil Wars, Women, and Gender Relations: An Overview," 7.

⁴ Ibid., 8.

⁵ Ibid., 9.

⁶ Ibid., 3.

trauma can reveal itself unintentionally as violent domestic abuse between husband and wife or mother and children.

Violence against women is also perceived as denigrating the manhood of male combatants, who failed to prevent their female family members from being tortured or sexually abused in front of them.⁷ Sexual abuse of women is used as a weapon of war; for example, in El Salvador and Guatemala, security forces abused young women as punishment for the simple act of sympathizing with the rebels.⁸ The worst cases happened in Bosnia and Herzegovina and Rwanda, Congo where women were often raped in the presence of their spouses, parents, or other family members to deepen the humiliation⁹ of the men, who were understandably psychologically affected by their inability to aid their relatives. It also breakdowns the family structure and trust of women. The rapes traumatized the women as well, due to the social stigma, humiliation and shame associated with the crime. Consequently, they usually did not reveal what happened and endured the suffering in silence. In Rwanda, an estimated 250,000 to 500,000 women were raped.¹⁰ Based on the research of Krishna Kumar, more than five thousand Rwandan women were impregnated through rape.¹¹ Many of those victims have been forced to raise the children of fathers who committed atrocities against them. Sexual violence and rape have profound effects on communities and the mental health of women.

⁷ Ibid., 16.

⁸ Kumar, "Civil Wars, Women, and Gender Relations: An Overview," 11.

⁹ Ibid., 11.

¹⁰ Daryn Reicherter and Alexandra Aylward, "The Impact of War and Genocide on Psychiatry and Social Psychology," in *Cambodia's Hidden Scar Trauma Psychology in the Wake of KR*, ed. by Beth V. Schaack, Reicherter Daryn and Chhang Youk, (Phnom Penh: Documentation Center of Cambodia, 2011), 17.

¹¹ Birgitte Sørensen, *Women and Post-Conflict Reconstruction*, United Nations Research Institute for social Development, The War-torn Societies Project, Occasional Paper No.3, (Geneva: United Nations, 1998), 15.

Women generally view their needs and interests as interrelated with the needs and interests of their male counterparts and family members.¹² In communities destroyed by civil war, the resultant poverty and starvation forces women to sell sex in order to support their families who lack food to survive. In Rwanda and Bosnia and Herzegovina, some wives engaged in selling sex. The trafficking of women is a severe problem in post-conflict countries. The high demand for sex by soldiers and UN peacekeeping troops, working far away from home, created an opportunity for local affluent military officials to exploit poor, young girls and women by establishing lucrative brothels. During the Vietnam War, seven U.S. military bases were established in Thailand, which increased the number of sex workers from 20,000 to 400,000 and contributed an estimated \$16 million to the Thai economy.¹³ Some Cambodian families, who were heavily in debt, sold their daughters into sexual slavery. It is extremely difficult for women to live in a society that views women as a possession. Once a girl begins working in a brothel, it becomes difficult for her to reintegrate into the community. She will not be able to find a respectable job and will also be discriminated against by the community. If she tries to leave the sex trade business, often her only option for survival is to return to the brothel due to the severe stigmatization within society. Nanda Pok, Head of Women for Prosperity, says, “We live with that scar for the rest of our lives. Society punishes us even though we didn’t do anything wrong. It’s our fault.”¹⁴

¹² Ibid.

¹³ Glenn Graves, “Post- Traumatic Stress Syndrome and Related Disorder Among Civilian Victims of Sexual Trauma and Exploitation in Southeast Asia,” in *The Psychological Impact of War Trauma on Civilians*, ed. by Stanley Kripper et al. (Westport, CT: Praeger, 2003), 205.

¹⁴ Karen J. Coates, *Cambodia Now: Life in the Wake of War*, (Jefferson, NC: McFarland, 2003), 170.

Research conducted in 1998 by Krishna Kumar indicates that more than fourteen thousand women worked as sex workers in Cambodia.¹⁵ This situation led to an astonishing increase in the number of cases of HIV/AIDs and sexually-transmitted diseases. In addition, the workers are vulnerable to sexual and physical abuse by men and are at risk of being gang-raped, which is called *bauk* in Cambodia. If they refuse to have sex with the group of men, they will likely be tortured. It is considered acceptable for men to commit such crimes based on the reasoning that the victims were paid for their services.¹⁶

Due to social gender norms and practices, the greater vulnerabilities of women, their war experiences, and the increased responsibilities placed on them after war, women are highly motivated to transition their societies from conflict to peace¹⁷ and actively contribute in nation building. It has become increasingly clear that women may play a key role in peacebuilding as part of the transitional justice process. Fifty-five percent of women in South Africa and fifty-one percent in Liberia provided statements during the Truth Commissions conducted in those countries.¹⁸ Despite the severe toll of conflict and war on women and children, opportunities emerge in post-conflict societies for gender

¹⁵ Kumar, "Civil Wars, Women, and Gender Relations: An Overview," 12.

¹⁶ "Researchers Delve into Cambodian Gang Rapes," Aljazeera, accessed March 30, 2013. <http://www.aljazeera.com/video/asia/2013/03/2013371211513784.html>.

¹⁷ Laura McGrew, et al., "Good Governance from the Ground Up: Women's Roles in Post-Conflict Cambodia," ed. by Sanam Naraghi Anderlini, Women Waging Peace Policy Commission, 2004, 1, accessed November, 17, 2012, http://www.peacewomen.org/assets/file/Resources/NGO/part_goodgovernancegrounduppostconflict cambodia_march2004.pdf.

¹⁸ Nahla Valji, "A Window of Opportunity? Making Transitional Justice Work for Women," UNIFAM, 2010, 12, accessed October, 20, 2012, <http://www.unwomen.org/wp-content/uploads/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf>.

equality and empowerment of women in the social, economic and political spheres within their countries.

Traditionally, Cambodian society has not endorsed females working outside the home, especially women or girls from the countryside. Since the genocide, gender roles have gradually changed and women have earned more freedom as the primary breadwinner of the family. After the peace agreement and UN peacebuilding project, human rights (including women's rights) were granted legal protection by the Cambodian Constitution, the supreme law in Cambodia.

The former tradition of denying girls the opportunity to receive an education (lest they be able to write love letters to their lovers) has now faded away and is considered impractical in the modern era of social media and high technology communication. Women and girls now contribute in all developmental sectors of the country—working for NGOs, the government, private companies such as garment factories, the tourism sector, and businesses in the markets. In the current economy, the sole income of a husband cannot support the high living standard in the cities. Income generated by the wife is also required to cover expenses and allow for savings.

When Cambodia finally achieved peace after decades of war, about sixty-five percent of the survivors of DK were women.¹⁹ They bore the heavy responsibility of rebuilding family life, community, the economy, and educational opportunities for children, all while silently suffering their trauma and pain. Aside from social initiatives, they also contributed to reconciliation and justice by testifying in the 1979 court

¹⁹ Trudy Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodia History*, (Copenhagen, Denmark: NIAS Press, 2008), 240.

proceedings, which held the former leaders of DK (Pol Pot and Ieng Sary) accountable for the crimes which occurred during their regime. Women contributed to the construction of memorials, called for an end to civil war, and returned from the refugee camps. These women refused to render the deaths of their loved ones meaningless by remaining silent; instead they emerged as the protectors of family heritage through their effective actions. They never abandoned their dual responsibilities to take care of their surviving family members as well as to honor those who died by seeking truth and justice on their behalf.

B. Research Purpose and Questions

This thesis will highlight the role of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the emerging roles of women as participants in the ECCC proceedings, and the promotion of human and gender rights through the empowerment of women in the judicial system of Cambodia. I will seek to identify preliminary findings that will lay the foundation for a larger dissertation research project that will explore more broadly the role of women in peacebuilding in post-conflict societies, with a wider emphasis on women as educators, repositories of memory and as true agents of peace and reconciliation. Rather than focus on women as victims of the regime, I provide examples of the contributions of women in building peace as educators, healers, justice seekers, and democracy advocates. Because women play a nurturing role within families and communities, they are in a position to contribute significantly to peacebuilding. Future research will focus more critically on local perceptions of justice within the transitional

justice narrative. It will also analyze the friction²⁰ associated with the transitional justice, in particular the vernacularization²¹ on the ground through local interpreters such as domestic and international NGOs and other personnel working in the field to promote justice and human and women's rights. Further research will also examine the role of women in education during the Khmer Rouge regime. Since the trial is ongoing, the thesis research will present problems and concerns related to gender issues during the research window. The research will also determine what retributive justice might be provided to victims of Democratic Kampuchea and the role of women in the justice process. Scholars such as Becker, Boua, Ebihara, Ledgerwood, Jacobsen, Vickery, and Mam discuss how DK policies to control sexuality resulted in changes in relationships within the family. The role and influence of Cambodian women throughout history has been examined,²² but little research has been conducted to address the recent contributions of women to the peacebuilding process through engagement with a strong legal institution and commitment to transitional justice after the war was ended. The research will contribute to the concept of globalization of human and women's rights and

²⁰ Anna Tsing, *Friction: An Ethnography of Global Connection*, Princeton University Press, 2004, 4.

²¹ Peggy Levitt and Sally Merry, "Vernacularization on the ground local uses of global women's rights in Peru, China India and the United States," *Global Networks* 9, 4(2009): 449.

²² Please look at Elizabeth Becker, *When the War Was Over: Cambodia and the Khmer Rouge Revolution*. New York: PublicAffairs, 1998; Chanthou Boua, "Development Aid and Democracy in Cambodia," In *Genocide and Democracy in Cambodia: Khmer Rouge, the United Nation and the International Community*, ed. by Ben Kiernan, Yale University of Southeast Asian Studies, 1993; May Ebihara, "A Cambodian Village under the Khmer Rouge, 1975-1979," In *Genocide and Democracy in Cambodia: Khmer Rouge, the United Nation and the International Community*, ed. by Ben Kiernan, Yale University of Southeast Asian Studies, 1993; Judy L. Ledgerwood, "Changing Khmer Conceptions of Gender: Women, Stories, and The Social Order" (PhD diss., Cornell University, 1990); Trudy Jacobsen, *Lost Goddesses: the Denial of Female Power in Cambodia History*, (Copenhagen Denmark: NIAS Press, 2008); Michael Vickery, *Cambodia: 1975-1982*, (Chiang Mai: Silkworm Books, 1984); Kalyanee Mam. "Democratic Kampuchea (1975-1979): Women as Instruments for Social Change," (Phnom Penh: Documentation Center of Cambodia, 2000).

assess the recent participation of women in the justice process through the Khmer Rouge Tribunal.

This thesis will focus primarily on the participation of women in the ECCC, which is the first ad hoc court of its kind that has allowed survivors to be a party to the proceedings. As a special court, what role does the ECCC play in localizing the global concept of human and women's rights in Cambodia? What does justice mean for these women? Why have they decided to participate in the proceedings? How do they feel toward the accused? Does their participation as testifying witnesses contribute to healing of their emotional wounds? What are their expectations of the court? Do their testimonies contribute to the historical record and the ECCC's verdict? Will their participation help to educate the younger generation about the DK regime? Does their participation in the court facilitate reconciliation and forgiveness? This research will examine the extent to which these women have played a role in educating the public, both directly and through the court, about genocide and about preserving the memories of those lost.

C. Chapter Outline

I chose to examine the contribution of these women to the justice-seeking process in an effort to end the dark history of atrocities that occurred during the Democratic Kampuchea regime and bring positive peace to the post-conflict country of Cambodia. In order to answer the above questions, I will analyze five aspects of women's participation in the ECCC. The first chapter is the introduction to the thesis, which consists of general ideas relating to women in post-conflict countries, with links to the case of Cambodian

women in the research purpose, research question, methodology, concept and definitions of peace building, justice and women's rights.

Chapter Two discusses localizing global concepts of human and women's rights in Cambodia and will assess the Cambodian experience in three contexts: the absence of gender issues at the post World War II international tribunals (the Nuremburg and Tokyo trials) and their gradual consideration by the International Criminal Court at the Hague; the evolution of the concept of gender crimes in international courts in other post-conflict countries such as Rwanda, the former Yugoslavia; and the circumstances of Cambodian women in the historical context of the DK regime. Women's rights gained importance in Cambodia when Cambodian society, faced with a dearth of able-bodied men, relied on its women to shoulder crucial agrarian and other economic tasks, and to play a significant role in reuniting broken families and communities, all of which contributed significantly to the rebuilding of society in the post-DK period. This chapter also focuses on improvements in women's rights in the post-DK period, in which the United Nations Transitional Authority of Cambodia (UNTAC) merged the concepts of human rights and gender rights. The ECCC, encouraged by NGOs, made further advances by allowing women to participate in the ad hoc trials as civil parties, including within its jurisdiction gender abuses such as forced marriage.

Chapter Three will focus on the establishment of the ECCC, its structure and limitations in prosecuting and investigating sexual and gender crimes, including the contribution of NGOs in having those crimes heard.

Chapter Four will discuss how the ECCC has provided a safe space for women to share their stories as they seek truth and justice for the crimes inflicted upon their families during the DK period. The chapter will also describe the challenges that women face while participating in the ECCC, especially the rigors of the trial proceedings. Notwithstanding these challenges, the ECCC did succeed in empowering the civil party women to question the accused through their legal representatives and the Chambers, to express suffering and grief for their lost loved ones, and to reclaim their dignity. Thus, the presence of women in the Court and their testimonies before the ECCC helped to foster the notion that women deserve rights in Cambodia, and that gender should be conceived as a rights-based concept.

Chapter Five highlights the many contributions that women are making to Cambodia as a nation. First, women's testimonies are contributing to the judicial process. They have spurred the development of legal procedures and the extension of the ECCC's jurisdiction to include forced marriage as a crime under Case 002 in the ECCC. Second, they have contributed to fighting impunity and building trust in the court system. They have demonstrated that women are able to fully exercise their rights in the court by using legal procedures as a platform to improve and uphold gender and human rights in Cambodia. Third, women civil parties have sought to establish the truth regarding the DK genocide and to correct the historical record in order to lay the foundation for healing and reconciliation. By sharing their knowledge and experiences of past violence with their family members and local communities and exhorting them to move forward to the future, women have served as the country's historical memory and as educators, helping

to bring a sense of closure to the traumas of Cambodia's dark past. In these meaningful ways, women have contributed to post-conflict peacebuilding in Cambodia.

D. Research Method and Data Collection

My research is based on qualitative methods that seek to address the answers to the above questions through interviews, participant observation, and court transcripts of civil parties' testimonies. I will use descriptive and contextual analysis to analyze the data. Descriptive analysis suits my research topic, since it is related to oral history. I will also analyze in-depth the existing literature as it relates to the data that I collected from the interviews and observations.

Interviews will be used as one of the key methods to reveal in-depth information about the roles of the ECCC in localizing the concept of gender and human rights and the roles of female civil parties in exercising their rights, sharing their memories, and educating the Court and the public. In order to support my argument, I randomly chose informants whom I met in Court during Case 002, arranging interviews at their homes or hotel rooms during their participation at the Tribunal in Phnom Penh.

My target is Case 001²³ civil parties, as well as some from Case 002.²⁴ I chose this strategy because most of the parties have unique situations related to my topic. The informants with whom I worked were divided into two categories: namely old women, whose close relatives died at the hands of the KR regime; and middle-aged women, who suffered during the regime, along with their husbands or relatives. I interviewed civil

²³ Civil Party Case 001 is individual who filed an application against Kaing Guek Eav alias Duch, former Head of S-21.

²⁴ Civil Party Case 002 is individual who filed an application against Khiev Samphan, Ieng Sary, Nuon Chea and Ieng Thirith, all of whom were former KR leaders and high-ranking officials.

parties who are still actively participating in the trial as well as a former prisoner at S-21 and S-24. I have conducted interviews with thirty civil parties, consisting of twenty women and ten men. Aside from civil parties, I also interviewed two staff members of the Victims Support Section. in order to gain a better understanding of their work and stay informed about court projects; one therapist from the Transcultural Psychosocial Organization (TPO), who assists civil parties (CPs) in the court room; one assistant lawyer, Lars Olsen, Public Affairs Legal Officer; Doung Savorn, Women's Hearing Organizer, Cambodian Defenders Project (CDP) and Youk Chhang, the Director of the Documentation Center of Cambodia. These people are working closely with the survivors and provided me with crucial knowledge. Moreover, another tool for my research included my notes and personal observations during the time I was assisting CPs in Case 001, since they filed applications with the Victims Unit for an entire year. I worked with NGOs to organize Civil Party Forums in an effort to better assist CPs in exercising their rights to participate in the ECCC proceedings. This experience provided me with a valuable opportunity to become familiar with their activities, perspectives, output and input for the Victim Participation Project at DC-Cam. As a former staff member of DC-Cam and of the Court during the summer of 2012, I was able to observe civil party participants and collect data during their travel and time spent at the ECCC facility, listening to their concerns and comments while attending the court hearings. I have also investigated journals and memoirs of survivors, which vividly portray the atrocities, fear and injustice experienced by these individuals. In addition, I have incorporated written documents from the ECCC and DC-Cam and scholars of the Khmer Rouge regime. Written documents such as reports, court transcripts, unpublished memoirs, short articles

and other published books and articles on the Cambodia Tribunal Blog were utilized for some civil parties.

E. Limitations

My research did not encompass interviews with all the civil parties in Case 001, in particular, Cambodians and foreigners living abroad. However, I conducted research interviews with some civil parties through other news sources and documentary films. In cases in which I had no opportunity to conduct an interview, I relied heavily on testimonies and other secondary sources. Therefore, the research does not represent all the civil parties in Cases 001 and 002. Due to time limitations for research in Cambodia, the author also followed up with civil party interviews regarding ongoing news in Case 002 via phone from the United States.

F. Definition

Women's Rights

Based on Article 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), women are entitled to the same rights as men and all forms of discrimination against women must be abolished. Women's rights are therefore human rights. "The term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human

rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”²⁵

Peacebuilding

Johan Galtung (1976), who coined the term peacebuilding, has a lasting legacy. Galtung identified three approaches to peace: peacebuilding, peacemaking and peacekeeping, in which peacebuilding is defined as “to promote sustainable peace by addressing the ‘root causes’ of violent conflict and supporting indigenous capacities for peace management and conflict resolution.”²⁶ However, the concept of peace relates primarily to human security and to identifying the root causes of conflict and war. Boutros-Ghali, former United Nations Secretary General, defined the concept of peacebuilding in his report, *Agenda for Peace*, as follows: “to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.”²⁷ For Kofi Annan, who also served as UN Secretary General, peacebuilding constitutes “actions undertaken at the end of a conflict to consolidate peace and prevent a recurrence of armed confrontation.”²⁸ The concept of peace is to advance beyond the post-conflict intervention and reconstruction; it requires building relationships which involve all parties. As John Paul Lederach stated, peacebuilding “is understood as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable,

²⁵ Article 1, CEDAW, *Division for the Advancement of Women, Department of Economic and Social Affairs, UN*, accessed on July 10, 2013, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

²⁶ “Peace Building and the United Nation,” *United Nations Peace Building Support Office*, accessed July 9, 2013, <http://www.un.org/en/peacebuilding/pbso/pbun.shtml>.

²⁷ Bruno Charbonneau & Geneviève Parent, *Introduction to Peacebuilding, Healing, Reconciliation*, ed. Bruno Charbonneau et al. (New York: Routledge, 2012), 5.

²⁸ Charbonneau, introduction, 5.

peaceful relationships. The term thus involves a wide range of activities that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct."²⁹

In short, peacebuilding seeks to identify the root causes of a conflict in order to stop the armed conflict, to rebuild the structures that support peace, and to build ongoing relationships to maintain sustainable peace.

Justice

The western concept of justice is divided into retributive and restorative justice. The term “retributive justice” refers to criminal action against defendants who allegedly committed crimes. In contrast, “restorative justice” focuses primarily on healing the wounds of injustice by focusing on the historical, political, economic and social contexts in which the abuses were committed.³⁰

This western concept of justice differs somewhat from the Khmer concept of justice. The term justice in Khmer, *yuttithor*, which combines the Sanskrit word *yutti* and the Pali word *dhama*, denotes fairness, righteousness, and compliance with the law. However, ordinary Cambodians have their own perception of justice: for them justice is truth and fairness. Hence, truth can distinguish right from wrong and also black from white. This concept of justice is based on the Buddhist doctrine that if one commits a favorable action, one will receive good *karma*; if one commits an unfavorable action, one will receive bad *karma*.

²⁹ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, D.C.: U.S. Institute of Peace Press, 1997), 20, 75, 84-85.

³⁰ Anne-Marie La Rosa and Xavier Philippe, “Transitional Justice,” in *Post-Conflict Peacebuilding: A Lexicon*, ed. by Vincent Chetail, (Oxford University Press, 2009), 371.

G. Literature Reviews

In most cultures, women are relegated to a secondary role in society. Cambodian girls symbolically represent Cambodian culture and family image. Nevertheless, a traditional Cambodian proverb compares girls in Cambodian society to a piece of cotton fabric, while boys are compared to a gemstone. Cotton, once stained, will never be restored to its original purity; however, a gem can always be polished to its original luster, as cited by Boua Chantou.³¹ Females in Khmer society are encouraged to be submissive, respectful caretakers of the family and household. Trudy Jacobsen, who authored *Lost Goddesses: the Denial of Female Power in Cambodian History*, argues that until the middle of the nineteenth century, women within the royal family and other high-ranking families played a role in court politics. Throughout succeeding wars and foreign influence, Cambodian society seemed to forget the past equality of women in their society. After the DK regime, society returned to the pre-established gender roles as defined in *Chbap Srei* (the women's code). Jacobsen argued that the significant role of women in the past is apparent in the country's mythology, the legal codes which protect women's interests and rights, and the continuation of a belief in supernatural female power.³²

Though there are substantial barriers to women in the pursuit of higher education or better opportunities in the political and social spheres, women have been increasing their political involvement by participating in communal elections, engaging in political

³¹ Boua, "Cambodia: Can Women Survive the New Peace?," New Left Review I/131, (January-February 1982), 19.

³² Trudy Jacobsen, *Lost Goddesses: the Denial of Female Power in Cambodia History*, (Copenhagen, Denmark: NIAS Press, 2008), 286, 288.

discussion, and actively working in women's associations and civil societies. Birgitte Sørensen concluded in her work, *Women and Post Conflict Reconstruction*, that even in light of women's positive contributions to peacebuilding and post-war reconstruction, they remain largely unrecognized and undervalued.³³ Although women are generally vulnerable to the impact of war and tradition, they are not uninvolved or passive in the rebuilding process.³⁴ Unfortunately, their efforts to restore their communities and bring about reconciliation and peace usually go unrecognized. In Jean Hatzfeld's book, *Life Laid Bare: The Survivors in Rwanda Speak*, the author highlighted the role of women in reconstructing their communal livelihood through the adoption of orphan children. The women cared for these orphans, providing them with food and shelter and sending them to school. For instance, Sylvie Umubyeyi, a 34 year-old social worker, worked to heal and rebuild her broken society by encouraging Rwandan women, men and children to face the future by sharing their stories about the atrocities of the past at a time when they were hopeless, traumatized and had lost trust in institutions of all kinds.³⁵ She said, "In the aftermath of genocide, there remains, buried in the survivor's mind, a wound that can never show itself in broad daylight before the eyes of others."³⁶ This condition only justice can pardon, a justice that makes room for truth, so it will drain away fear, a justice to reconcile.³⁷

Cambodian women endured a similar tragic historical past; a lot of women still struggle to share their past experiences. Some people feel that their soul will not die in peace if they cannot witness justice for their dead relatives. It is difficult to advance

³³ Sorensen, *Women and Post-Conflict Reconstruction*, 63.

³⁴ Ibid.

³⁵ Hatzfeld, *Life Laid Bare: The Survivors in Rwanda Speak*, 214.

³⁶ Ibid., 233.

³⁷ Ibid.

society without having achieved real justice, with truth and reconciliation. Youk Chhang, Director of DC-Cam, compares Cambodia to “broken glass,” adding “without justice, we cannot put the pieces back together.”³⁸ It is indeed true that if the atrocities of the DK regime are not subjected to justice, it will be difficult to restore the broken pieces of glass.

Why is justice so important to victims of atrocity? In a post-conflict society such as Cambodia, which is in the process of emerging from the horrors of genocide, a balance between truth, justice, peace and reconciliation must be practiced. As noted by Laura McGrew, “A judicial mechanism such as a trial serves many purposes: challenging the culture of impunity; individuating guilt, to avoid assigning guilt collectively to an entire group; averting unbridled private revenge; fulfilling an obligation to the victims to publicly acknowledge guilt and innocence; and deterring or punishing.”³⁹ The cycle of violence is at risk of reemerging if the perpetrators enjoy freedom without legal consequence. An effective way to avoid such an escalation of violence, as discussed by scholar Martha Minow, is to transfer the responsibility for placing blame and punishment from the victims to public institutions, in accordance with the Rule of Law.⁴⁰ Moreover, relegating punishment to a public institution removes the tendency for individual vengeance.⁴¹ Through retribution, the perpetrator will receive punishment based upon the crimes they inflicted. It also allows the community to correct the perpetrator’s view that

³⁸ Kerry John, “Heros and Pioneers Youk Chhang” Time 100, *The Time Magazine*, May 03, 200, accessed November 9, 2012,

http://www.time.com/time/specials/2007/article/0,28804,1595326_1615754_1615879,00.html.

³⁹ Laura McGrew, “Transitional Justice Approaches in Cambodia,” OSJI, 140, 2005, accessed December 10, 2012, <http://www.opensocietyfoundations.org/publications/justice-initiatives-extraordinary-chambers>.

⁴⁰ Minow, *Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*, (Boston: Beacon Press, 2000) 11-12.

⁴¹ Ibid.

the victim was less valuable than the perpetrator. Furthermore, the community reasserts the truth regarding the victim's value by inflicting a publicly-visible defeat on the perpetrator.⁴² Justice is rendered not only for the survivors of the crimes, but also for the perpetrators. Therefore, a trial provides opportunities for both sides to have their voices heard on an equal basis.

The healing and reconciliation process is one local approach to peacebuilding activities.⁴³ Positive and sustainable peace might not be achieved if the peacebuilding troops remain only a few years and do not take into consideration the necessary long-term healing and reconciliation of the population.⁴⁴ Research has shown that peacebuilding in post-conflict countries has been ineffective when the healing process was not given priority.⁴⁵ Bruno and Parent quoted Taylor-Ide and Taylor in 2002, stating that “a crisis weakens a community's vital resources. The wounds must be healed and strength rebuilt for forward progress. Otherwise, fracture lines may open up again, with crisis breeding further crisis.”⁴⁶ Therefore, healing and reconciliation is critical for the Cambodian people, especially the female survivors who have been anxiously awaiting truth and justice on behalf of their relatives for more than three decades. Achieving healing and reconciliation requires a safe space in which to share experiences, to express suffering in one's own words, and to build relationships. As Lederach mentioned, “Reconciliation presents a space, a place or location of encounter, where parties to a conflict meet.

Reconciliation must be proactive in seeking to create an encounter where people can

⁴² Ibid., 12.

⁴³ John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, (Washington, DC: U.S. Institute of Peace Press, 1997), 20.

⁴⁴ Bruno Charbonneau and Geneviève Parent, Introduction: Peacebuilding, Healing, Reconciliation to Peacebuilding, Memory, and Reconciliation, ed. by Bruno Chabonneau et al. (Oxford: Routledge, 2012), 7.

⁴⁵ Charbonneau, Introduction, 7.

⁴⁶ Charbonneau, Introduction, 9.

focus on their relationship and share their perceptions, feelings, and experiences with one another with the goal of creating new perceptions and a new shared experience.”⁴⁷ The safe space for these women is the government-sanctioned trial in the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The history of the Khmer Rouge in Cambodia is a sensitive topic for open discussion, since some former KR cadres remain in high-ranking positions in the current government and other important figures, including the former King Norodom Sihanouk, had questionable involvement with the KR regime. Thus, this trial serves as a secure place for survivors to openly express themselves, recollect their memories, charge the accused, seek the truth, heal and reconcile. The purpose of the trial is to render justice to the survivors and the accused. The trial will succeed or fail depending upon whether it fairly represents the interests of survivors and the accused and meets the goals established by the Court. However, the participation of victims in the trial proceedings gives the Court a great deal of credibility. Survivors’ participation in the ECCC is a ground-breaking achievement in the history of international criminal tribunals, wherein civil parties may challenge their oppressors, as discussed by Thomas and Chy.⁴⁸

It is remarkable to observe the victims and the accused, sitting in the same room, listening to the unfolding stories of witnesses, defendants and civil parties. Many civil parties feel empowered to be a part of the historical proceeding by providing testimony

⁴⁷ Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies*, 30.

⁴⁸ Sarah Thomas and Terith Chy, “Including Survivors in the Tribunal Process,” in *On Trial: The Khmer Rouge Accountability Process*, ed. John D. Ciorciari and Anne Heindel, Phnom Penh: Documentation Center of Cambodia, 2009, 287.

about their suffering before the nation and the world.⁴⁹ The trial will serve as a record of the history of the DK period, which resembles a puzzle with a lot of missing pieces. The testimonies of witnesses and civil parties play a powerful role in determining the guilt of the accused. In the case of the Holocaust genocide, the physical evidence was generally destroyed. During the testimony of Wells, a witness in the Eichmann trial, he stated that he was one of the inmates recruited to uncover the mass graves where people had been killed over a three-year period. The mass graves had been burned to ash, refilled with fresh earth, and planted with crops to destroy evidence of mass killings committed by the Einstazgruppen. No one would know that the place hid the site of mass graves.⁵⁰ His testimony was very important to the trial since his memory could not be erased, as were the traces of physical evidence, such as the bodies and mass graves. Lawrence Douglas, in his book *The Memory of Judgment: Making Law and History in the Trials of the Holocaust*, remarks that memories of survivors present very powerful testimony during the trial. He quoted Laurence Langer's word "heroic memory," meaning the memory to salvage "from the wreckage of mass murder...a tribute to the victory of the human spirit."⁵¹ He also described the narrative of heroic memory as providing "a version of Holocaust reality more necessary than the true."⁵² The same can be said of civil parties testifying before the ECCC—they have narrated heroic memory that reflects reality and sheds light on the darkness of the DK history. The heroic memory also links to the notion of nation building.

⁴⁹ Ibid.

⁵⁰ Lawrence Douglas, *The Memory of Judgment: Making law and History in the Trials of the Holocaust*, (New Haven, CT: Yale University Press, 2001), 126.

⁵¹ Ibid., 128.

⁵² Ibid.

The testimonies of survivors, witnesses and perpetrators serve not only to determine potential punishment, but also to educate, reconcile and bring about sustainable peace for the whole nation. Many survivors are grateful to have their experiences and testimonies be documented for both legal and education purposes for the next generation.

Fighting impunity is another aspect of the trial and many researchers expect the process of transitional justice to promote the Rule of Law, justice and reconciliation. The localization of the transitional justice process does not always work as expected. During the process, unanticipated problems often occur between global thought and local realities. This concept is described by Anna Lowenhaupt Tsing as friction. She compares the word “friction” to “the awkward, unequal, unstable and creative qualities of interconnection across difference.”⁵³

The global concept of justice assumes that holding the former DK leaders accountable for the crimes they committed during the regime would address cultural impunity in Cambodia. In reality, this may or may not be the case within the reality of Cambodia. According to Alex Hinton in his Introduction: Toward an Anthropology of Transitional Justice in *Transitional Justice Global Mechanisms and Local Realities after the Genocide and Mass Violence* in 2010, there have been some improvements in the methods which transitional justice researchers and practitioners employ among the local people to acknowledge their traditions of dealing with conflict and resolution (such as *gacaca* in Rwanda). However, there has been less focus on how the transitional justice

⁵³ Anna Tsing, *Friction: An Ethnography of Global Connection*, (Princeton University Press, 2004), 4.

concepts are interpreted and transmitted into local idioms.⁵⁴ It is difficult to project whether the culture of impunity, which is deeply rooted in Cambodian culture, will be successfully uprooted. Scholars of Khmer studies, such as Kheang Un and Judy Ledgerwood, do not agree with some assertions that the Tribunal may serve as a model for a transparent justice system in terms of impartiality, professionalism and respect for the Rule of Law.⁵⁵ Based on their research of the judicial system, the system is corrupt and full of patronage.⁵⁶ However, Duch's trial (Case 001) has brought the history of the DK period to light and motivated people to learn about and discuss the regime, all of which contributes to healing and reconciliation.

One friction within the justice process centers on bringing about healing and reconciliation for survivors of sexual abuse crimes through trial. During and after war and conflict, women are subjected to sexual abuse and rape and then often killed to erase the evidence. During the DK regime, women and girls were tortured, sexually abused and raped, and subjected to forced marriage. However, the crimes were silenced for many reasons: (1) the witnesses were not courageous enough to report the crimes to secure their own safety; (2) victims of the crimes were killed to eliminate the physical evidence since the crimes were often committed by lower-level Khmer Rouge (Kalyanee Mam cited that "it was imperative that all evidence of the crime was completely destroyed and higher

⁵⁴ Alexander L. Hinton, introduction to *Toward and Anthropology of Transitional Justice; or, Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, by Alexander Laban Hinton (New Brunswick, NJ: Rutgers University Press, 2010), 11.

⁵⁵ Kheang Un and Judy Ledgerwood L., "Is the Trial of 'Duch' A Catalyst for Change in Cambodia's Courts," *Asia Pacific Issues* No 95 (June 2010): 2, accessed September 9, 2012, <http://www.eastwestcenter.org/sites/default/files/private/api095.pdf>.

⁵⁶ *Ibid.*

officials did not find out about the rape that had taken place”⁵⁷); (3) both victims and witnesses were threatened with death if the crime was revealed; (4) the shame and stigmatization imposed on victims and their families due to the conservative nature of Cambodian culture; and (5) the trauma and suffering victims had to endure if they were to recall and narrate the rape and sexual abuse crimes. In the research of Kalyanee Mam, the survey conducted by Nakagawa Kasumi and her students on “Gender-based Violence during the Khmer Rouge Regime”, she also discovered that a lot of sexual and gender-based crimes occurred in many forms, including forced marriage and marital rape, rape by Khmer Rouge soldiers, local authorities and high ranking officials. These crimes took place in close proximity to the community, in the forest before execution, and also in the security centers throughout the country. As David Chandler mentioned in book on the infamous “S-21” prison in Phnom Penh, female prisoners were frequently harassed and assaulted.⁵⁸

Therefore, victims of sexual crimes in Cambodia find it difficult to receive justice through trial, unlike the ICTY and ICTR, in which rape was charged as genocide and a crime against humanity. The ECCC has shown its limitations in prosecuting and investigating sexual and gender-based crimes, including rape, in both Cases 001 and 002. Survivors of rape crimes during DK such as Tang Kim and other Civil Parties in Cases 001 and 002 may never witness justice. Rape was not included as a domestic crime under the ECCC statute, even though Cambodia’s 1956 Penal Code, which was in force at the

⁵⁷ Kalyanee Mam. “Democratic Kampuchea (1975-1979): Women as Instruments for Social Change,” (Phnom Penh: Documentation Center of Cambodia, 2000), 27.

⁵⁸ David Chandler, *Voice from S-21: Terror and History in Pol Pot’s Secret Prison*, (Chiang Mai, Thailand: Silk Worm Books, 1999), 38.

time of the DK regime, listed rape as crime.⁵⁹ Rape will not be investigated in Case 002 under the crime of rape itself because it is believed that rape was infrequent, since the DK had strict rules for which violators would be strongly punished. However, rape in the form of forced marriage will be prosecuted in Case 002. Ultimately, these cases might not be able to be ruled upon by the ECCC due to the lengthy court process and advanced ages of the accused in Case 002. In summary, justice does not always go smoothly without friction. Justice often fails to succeed in dealing with critical on-the-ground realities, including social structure, local knowledge, and the complex history and politics of a country.⁶⁰

Craig Etcheson feels that the Tribunal will enable Cambodia to transform its political culture so that the elite will no longer assume that power can be used with impunity over the weak population in society.⁶¹ He also adds that the KR Tribunal is educating the Cambodian people regarding the democratic accountability system, providing them with confidence so they can play a critical role in enforcing and maintaining these changes.⁶² For Etcheson, the educational aspect of the court is a key element that will allow the next generation of Cambodians to move forward beyond the culture of impunity.⁶³ Indeed, the ECCC has united survivors from all over the world to meet in one place and share their mutual suffering in an effort to end the past impunity

⁵⁹ Katrina Anderson, "Turning Reconciliation on Its Head: Responding to Sexual Violence Under the Khmer Rouge," *Seattle Journal for Social Justice*, No 2, 3(2012): 796, accessed on September 12, 2013, <http://digitalcommons.law.seattleu.edu/sjsj/vol3/iss2/30>.

⁶⁰ Alexander L. Hinton, introduction to *Toward and Anthropology of Transitional Justice; or, Transitional Justice: Global Mechanisms and Local Realities after Genocide and Mass Violence*, by Alexander Laban Hinton (New Brunswick, NJ: Rutgers University Press, 2010), 17.

⁶¹ Craig Etcheson, *After the Killing Fields: Lessons from the Cambodian Genocide*, (Westport, CT: Praeger, 2005), 188-189.

⁶² *Ibid.*, 189.

⁶³ *Ibid.*, 190.

and enhance human and gender rights. Women are playing a crucial role in that justice process.

II. Chapter 2: Localizing Global Concepts of Gender and Human Rights in Cambodia

The United Nations Transitional Authority of Cambodia (UNTAC) introduced the global concept of human rights to Cambodia during its peacebuilding efforts after the Paris Peace Agreement in 1991, and also established a Non-Governmental Organization (NGO) mechanism to maintain and strengthen human rights and women's rights in the country. Unfortunately, UNTAC departed Cambodia without having resolved the problems associated with the Khmer Rouge, including their boycott of the election and their continued role as a rebel force within the country. The United Nations acknowledged the country's need to bring closure to the dark violence of the past through the prosecution of the former Democratic Kampuchea (DK, 1975-1979) leaders, holding them accountable for their serious violations of human rights during the years in which they held power. I argue that the Extraordinary Chambers in the Courts of Cambodia (ECCC) has localized the global concept of human rights in Cambodia through the establishment of a strong judicial institution, an achievement which the UN failed to accomplish more than a decade ago during its peacebuilding mission. The ECCC has not only given a new voice to Cambodians, including women, it has linked the local aspect of Cambodian gender and human rights to the larger historical and global context. Through participation in this judicial process, the courts of Cambodia were held to international legal standards that improved and strengthened the judicial system of the country. However, the ECCC lacks the resources and commitment to investigate and prosecute sexual and gender crimes under its rules in Case 001 and 002. Before discussing Cambodia in particular, we should look at the development of human rights from an international perspective.

1. The Development of Human Rights and Gender Justice under International Tribunals

The development of individual rights within international human rights law and the pursuit of justice against serious crimes against humanity are legitimate goals of the global justice system in securing sustainable peace for mankind. International humanitarian law was formally established by the Hague Conventions (1899, 1907) to address war crimes. The Geneva Conventions (1949) and Geneva Refugee Convention (1951) further developed international humanitarian law, creating mechanisms to cope with war crime after World War II. Legal mechanisms to address human rights have improved since the establishment of the war crime tribunals in Nuremburg, Tokyo, Yugoslavia, Rwanda, Sierra Leone and the International Criminal Court (ICC), which has universal jurisdiction, but not yet universal membership. However, there were no prosecutions of sexual or gender crimes at either the Nuremburg or Tokyo tribunals. After World War II, the word “rape” was not mentioned in the judgment of the International Military Tribunal (IMT), which was established to bring the most senior responsible military and civilian leaders of Nazi Germany to justice.⁶⁴ Similarly, charges by the International Military Tribunal for the Far East (IMTFE) against the Japanese leaders, who were accused of waging aggressive wars in the Asia-Pacific region after World War II, did not include any accusations pertaining to the rape and sexual slavery of

⁶⁴ Susana Sá Couto, “Victim Participation at the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia, a Feminist Project,” American University, WCL Research Paper No. 2011-30, 304, accessed December 12, 2012, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1934320.

nearly 200,000 women by the Japanese military throughout the Asia-Pacific region during the 1930s and 1940s.⁶⁵

In addition to international crime tribunals, truth commissions have worked in concert with national and international institutions to bring a model of justice and reconciliation to post-conflict countries in an effort to end past violence and impunity. Academics and legal professionals have been working side-by-side with NGOs to ensure that individuals or states cannot easily use state sovereignty to shield the border in order to commit crimes against humanity or any other crimes, including sexual and gender-based crimes. Since late 1998, sexual and gender crimes are no longer ignored by international tribunals. Many individuals have been charged with rape and sexual crimes under the international law.

2. Prosecution of Gender Crimes in International Tribunals

In late 1998, charges of gender-based violence were brought in various international tribunals, advancing the effort to cope with the prevailing impunity for sexual and gender-based violence committed during times of war, conflict, and mass violence. Before that time, such crimes were considered less severe than mass murder or other serious crimes within the scope of war atrocities.

Awareness of the large-scale and systematic use of rape as a weapon of war and political repression has led to the prosecution of rape and other forms of sexual violence as instruments of war crimes, crimes against humanity, means of torture, forms of persecution, enslavement and genocide by the ad-hoc international criminal tribunals

⁶⁵ Ibid., 305.

established to prosecute such crimes in the former Yugoslavia (ICTY, 1993), Rwanda (ICTR, 1994), the Special Court of Sierra Leone (SCSL, 2002), and the Rome Statute, which established the International Criminal Court (ICC, 1998). These tribunals prosecuted sexual and gender-based crimes as war crimes, genocide and crimes against humanity.⁶⁶

The trial judgment in the case of Jean-Paul Akayesu of Rwanda in September 1998 set a significant precedent for the prosecution of acts of gender-based genocide by international tribunals. The ICTR Trial Chamber ruled that rape can be considered a genocidal act when it is committed with the specific intent to destroy, in whole or in part, a particular group.⁶⁷ The ICTR Trial Chamber stated that crimes of sexual violence constitute part of a process of destruction of a group, in which the violence leads to the physical and psychological destruction of a group of women, their families, and their communities. In Rwanda, for instance, “sexual violence was a step in the process of destruction of the Tutsi group—destruction of spirit, of the will to live, and of life itself.”⁶⁸ Even though there has been improvement in the prosecution of gender crimes under the ICTR, victims of sexual violence experience difficulty with the tribunal due to restrictions on their testimonies. They reported that the judges did not take much interest in their pain or their experiences.⁶⁹

⁶⁶ Sá Couto, “Victim Participation at the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia a Feminist Project,” 297-359, 299.

⁶⁷ Valerie Oosterveld, “Prosecution of Gender-Based Acts of Genocide under International Law,” in *Plight and Fate of Women During and Following Genocide*, Genocide: A Critical Bibliographic Review, Volume 7, ed. Samuel Totten, (Piscataway, NJ: Transaction Publishers, 2009), 207.

⁶⁸ Ibid.

⁶⁹ Ibid.

The ICTY's Trial and Appeals Chamber found a correlation between gender and the genocidal intent to destroy. The Appeals Chamber considered that the extermination of 7,000 to 8,000 Bosnian Muslim boys and men strongly impacted the continuity and survival of that community in Srebrenica.⁷⁰ The lack of marriage partners would render women unable to remarry and produce children, leading to extermination of the Muslim community in Srebrenica.⁷¹

Although rape may be prosecuted as a war crime and a crime against humanity, only a fraction of the voices of such victims are heard. For example, only 18 percent of 3,700 witnesses who testified before the international courts from 1996 to 2006 were female.⁷²

Another development in the fight against impunity for sexual and gender-based violence (GBV) crimes over the last twenty years has been the adoption of two significant resolutions on GBV by the UN Security Council. Firstly, UN Resolution 1325 was adopted on October 31, 2000, citing the need for women to become involved in all stages of the peace process, to fight GBV and impunity for rape crimes in zones of conflict in order to protect women and children under international laws. Secondly, UN Resolution 1820 was passed in 2008, stressing the need for the exclusion of sexual violence crimes from amnesty provisions in the context of the conflict resolution process. This resolution requests the UN Secretary-General to include information and recommendations on the protection of women and girls in the country reports which are sent to the Security Council, and also emphasizes the importance of women's

⁷⁰ Ibid., 208.

⁷¹ Ibid., 208.

⁷² Ibid., 308.

participation in the prevention of conflict, conflict resolution, and post-conflict peacebuilding.⁷³ These two resolutions contribute significantly to global gender rights protection by addressing sexual violence as a detriment to international peace and security. Under the second resolution, crimes of sexual violence may be considered international crimes, namely war crimes, crimes against humanity, and genocide.

In brief, the evolution of the prosecution of gender and sexual crimes by international tribunals and the development of two UN resolutions acknowledging the harmful effects of gender and sexual crimes on women and children, as well as on security and peace in countries around the world, have set great precedents which post-conflict countries may follow.

Cambodia is among the post-conflict countries that have endured extended civil war, mass atrocities, massive population transfer, gender and sexual crimes, and genocide. The devastating results of these social upheavals made it difficult for Cambodia to establish legal remedies as a priority after the fall of Democratic Kampuchea, as was the case in Rwanda, the Former Yugoslavia, and Sierra Leone. In the unique case of Cambodia, the establishment of an international-standard tribunal took almost 30 years, due to the prolonged civil war and severe economic devastation. The gender and sexual crimes perpetrated during the DK period have scarcely been heard before the ECCC because the crimes were complicated and controversial for legal reasons, including DK's strict rules on gender and sexual crimes, the change of gender norms, and the role and limitations of the ECCC in terms of prosecuting those crimes.

⁷³ "Security Council Resolution 1820," *Peace Women: women for peace and peace for women*, accessed June 3, 2013, http://www.peacewomen.org/themes_page.php?id=16&subtheme=true&adhoc=87.

Under the leadership of Pol Pot, who followed strict Maoist communist doctrine, Cambodia was turned into an agrarian society in which all citizens were forced to work as equals, farming rice and building agricultural infrastructures such as dams and canals. This agricultural revolution was to be the basis of an industrial revolution brought about by a collective work society. The regime proudly sought to rapidly build a socialist agrarian state, utilizing slogans borrowed from China, such as *moha loot phloh moha oschar*, which means “super great leap forward.” The regime also modified the cultural and sexual norms of society, resulting in massive changes in the role and status of women during Democratic Kampuchea (1975-1979), the People’s Republic of Kampuchea (PRK, 1979-1993), as well as during the subsequent period of peace. These changes were reflected in the constitutional and legal frameworks adopted by the Cambodian government, with the support of UNTAC and some NGOs, and finally concluded with the work of the ECCC, in which Cambodian women played a crucial role in moving the country forward toward positive peace by exercising their rights and bringing closure to the past abuses of the DK. The Royal Government of Cambodia (RGC) localized the concept of gender and human rights in the national constitution, domestic law and government strategic plan.

The RGC demonstrated a commitment to the promotion of gender and human rights by signing a number of conventions in the early 1990s, such as the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 1992; the Millennium Declaration; the Neary Rattanak (I-III), which was included in the government’s five-year plan; and finally, the participation of women as civil parties and witnesses in the ECCC and Women’s Hearing.

3. Women under the Khmer Rouge Regime

One might wonder about the definition of “Khmer Rouge” and how this group was able to assume control of Cambodia! The Khmer Rouge were a group of far-left communists which were designated ‘Khmer Rouge’ by the deceased King Norodom Sihanouk, with ‘rouge’ indicating ‘red’ for their communist ideology. The Khmer Rouge movement originated within the Indochinese Communist Party, which aspired to expel the French as colonizers of the region during World War II. The Khmer People’s Revolutionary Party (KPRP) was formed under the guidance of the Vietnamese-led Indochinese Communist Party.

When the Khmer Rouge defeated the American-backed Lon Nol regime on April 17, 1975, the Cambodian population, including civil party Im Sunty and other civil parties, were full of optimism that peace would prevail and bring social stability after decades of war. She and her seven young children were hopeful that the new Khmer Rouge government would reconcile the war-torn country and focus on development and prosperity, so she could re-unite with her husband, who was on a work mission to Switzerland. In contrast, the regime brought suffering beyond description due to its political agenda, unlawful executions, and social and cultural destruction. Using the false threat of American bombardment as subterfuge, the Khmer Rouge forced the residents of Phnom Penh to abandon their houses and evacuate the city. Im Sunty, like other survivors living in Phnom Penh, could not remain at her house to wait for her husband. She and her seven children were forced to leave the city under threat by the KR, whose black-clad soldiers spent three days clearing the city. Ultimately, the evacuation of city residents like Sunty and her family lasted three years, eight months and twenty days. A Khmer Rouge

leader, Noun Chea, revealed during the ECCC court hearing on December 13, 2011, that the decision to evacuate was made in order to provide the starving population of the city with enough food to eat.⁷⁴ Prior to the liberation, over half a million Cambodian refugees had flooded into Phnom Penh to escape the bombs and skirmishes. During that time, food supplies to the city were limited due to the disruption of supply lines as a result of the ongoing war.⁷⁵

In actuality, the Khmer Rouge evacuated the population in order to use them as a slave labor force in the countryside. By increasing productivity quotas for rice farming to three tons per hectare, the Khmer Rouge hoped to progress rapidly toward socialism and to defend the country from enemies.⁷⁶ In setting such unrealistic quotas, the DK leaders totally disregarded the need to nurture the country's manpower and skills. The results of their policies were disastrous. The country's unity was disrupted due to the social distinctions created between "base" (rural) people and "new" (urban) people, which served to reinforce the superiority of an agrarian way of life.

Having taken complete control of the capital city, Phnom Penh, Saloth Sar (alias Pol Pot), Prime Minister of Democratic Kampuchea, promulgated eight policy measures:⁷⁷ evacuating all towns, banning all markets, abolishing the currency of the Lon Nol regime and withholding the revolutionary currency, defrocking all Buddhist monks and forcing them to farm rice, executing all leaders of the Lon Nol regime beginning at

⁷⁴ "Case 002-Nuon Chea, 13 December 2011-Part 2," You tube, accessed June 5, 2013, http://www.youtube.com/watch?v=43pMaVQoTy0&list=PLabG4qeb-aneSJXqBKQMzc78MGt4_iHOR.

⁷⁵ Elizabeth Becker, *When the War Is Over: Cambodia and the Khmer Rouge Revolution*, New York: PublicAffairs, 1998, 16.

⁷⁶ David P. Chandler et al, *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, (New Haven, CT: Yale University Southeast Asia Studies, 1988), 10.

⁷⁷ Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, 55.

the highest levels, establishing cooperatives with communal eating throughout the country, expelling the Vietnamese minority population, and dispatching troops to the borders (especially the Vietnamese border). The rapid social changes caused Sunty to lose her will to survive. She described the unpreparedness of her children for the new regime: they did not bring food with them and had only books and other school materials in their backpacks, with the exception of her seven year-old son who had a little snack with him. She laughed as she recalled that her older daughter was even wearing shoes with heels during the evacuation. They expected to return within three days, as they had been told by the KR.⁷⁸ Their lives had been turned upside down. She was unable to contact her husband, Prof. Phung Ton, since the DK leaders had totally eliminated connections with the outside world. The extreme policies of the Khmer Rouge included forced evacuation from the cities to the countryside, inadequate food rations leading to starvation, lack of proper medicine resulting in unnecessary deaths, use of torture and reeducation as severe punishments, and imprisonment and execution without trial. These extreme and unchecked policies completely disrupted the country's way of life. Living conditions differed from village to village, but overwork, starvation, and mass killing were a common occurrence throughout the country. As a result, an estimated 1.7 to 2.2 million people died during the DK regime, based on investigations by the court.⁷⁹

A. Destruction of the Social Fabric

Civil Party Sunty initially found it extremely difficult to adapt to the living conditions imposed by the DK regime. She used to be paid to work, but during the regime

⁷⁸ Interview with Im Sunty, August 12, 2012.

⁷⁹“Co-investigating Judges Indict Khieu Samphan, Nuon Chea, Ieng Sary and IengThirith,” September 16, 2010, accessed February 22, 2013, <http://www.eccc.gov.kh/en/articles/co-investigating-judges-indict-khieu-samphan-nuon-chea-ieng-sary-and-ieng-thirith>.

she had to expend all of her physical effort to work collectively in exchange for daily meals, which were considered unfit for humans. The local (“base”) people showed disdain toward her and her family, refusing to communicate with them because they were labeled 17 April (“new”) people. The leadership of the Khmer Rouge was collectively known as *Angkar* (“organization”). *Angkar* divided the population by gender, marital status, and age; each group was relocated to work in various places assigned by the village chief. Cambodians are extremely family-oriented and the Khmer Rouge considered family relationships to be a threat to *Angkar*.⁸⁰ Women were deprived of their traditional role as family caretakers—preparing food, and nurturing familial and community bonds.⁸¹ *Angkar* even displaced women in their traditional role of raising children by separating children from their parents and placing them in communal groups based on age. In this way their parents were free to work full time. Children were assigned to work collecting manure and leaves for fertilizing the rice fields. Civil Party Sophany Bay, who lost all of her family members including three children, testified on June 14, 2013 before the ECCC regarding the way in which the KR tricked the young children into spying on their parents and then revealing information about them while they were away at work. Her children were asked about the former employment of their parents. Luckily, she had warned her children not to utter a single word about the fact that their father had been a soldier and was in the United States, otherwise they all would have been killed. The KR also threatened and tortured the young children in order to get information they needed.⁸² Moreover, parents or individuals were no longer permitted to

⁸⁰ Becker, *When the War Is Over*, 225-226.

⁸¹ Judy Ledgerwood, “Death, Shattered Families, and Living as Widows in Cambodia,” 70-71.

⁸² Transcript of hearing on the substance in Case002 Case File N° 002/19-09-2007-ECCC/TC 04 June 2009, Trial Day 187, 26, accessed September 12, 2013, <http://www.eccc.gov.kh/document/court/26608>.

make decisions regarding marriage. Instead, *Angkar* presided over mass marriages of couples chosen at their discretion. At least 40,000 men and women were forced to marry during the DK years, starting in 1977.⁸³ Women lost their social support systems, which adversely affected the well-being of their families and themselves.

B. Widespread Malnutrition

The population was restricted to eating in communal dining halls and received a small ration of inedible food and rice at the lunch break. Often they were given only one or two ladles of watery porridge mixed with locally-available vegetables, such as water lilies, morning glories, banana stems and edible leaves. Survivors of the regime stated that the food ration resembled pig food more than human food.⁸⁴ Due to extreme hunger, people were reduced to eating rats, baby frogs, snakes and other living things to survive. Eating individually was considered a betrayal of the collective consciousness, and anyone caught eating privately would be sent for reeducation to enhance their commitment to the revolution. Pregnant women were denied adequate food and nutrition; the same was true for babies, who usually appeared weak, pale, and very skinny. Survivors always described their knees as being bigger than their heads, causing them to be easily blown over by the wind. Due to the lack of protein and constant hard labor in the fields, most women no longer menstruated or did so on an irregular basis. Ieng Thirith, the DK Minister of Social Affairs, was sent to investigate the well-being of the population in the Northwest Zone, where she witnessed the harsh living and working conditions of the peasants. She said, “In Battambang [Province], the cadres forced everyone to walk to the

⁸³ “Second request for investigative actions concerning forced marriages and forced sexual relations,” submitted by Co-Lawyers of Civil Parties, 002/19-09-2007-ECCC/OCIJ, 15 July 2009, 6.

⁸⁴ Interview with Civil Party Case 001/002, September, 2012.

rice fields, which were very far from the villages. The people had no homes and they were all very ill...I know the directives of Prime Minister Pol Pot were that no elderly people, pregnant or nursing women, or small children were to work in the fields, but I witnessed everyone working in the rice fields, exposed to the elements and the very hot sun. Many were ill with diarrhea and malaria.”⁸⁵ She reported that the Northwest Zone cadres were committing a mistake by not following the orders of the party. She did not offer a solution to address the problem of the inhumane working conditions being imposed on pregnant women and small children, but instead blamed enemy agents within the party’s rank. She stated, “Enemy agents have infiltrated our ranks at the highest levels. They are deceiving us by pretending that they are following our line [policies].”⁸⁶ Ironically, it was *Angkar*’s unrealistic plan to improve the rice yields in the zone which caused the DK cadres to impose the harsh living and working conditions in the zone.

C. Lack of Medical Care

Due to inadequate food rations and long hours of work, the health of women and children deteriorated significantly. Starving people searched for wild leaves, mushrooms and anything else which might be edible, sometimes becoming seriously ill because something they picked was poisonous. Because the doctors were inexperienced and the medicine was ineffective, people generally succumbed to curable diseases, such as diarrhea, colds, fever and injury. People were forced to live and work deep in the forest, where the prevalence of malaria was high. Infections were rampant, spreading easily among groups of people. The Khmer Rouge developed a medicine which was commonly

⁸⁵ Becker, *When the War Was Over*, 236.

⁸⁶ Ibid.

called the “rabbit dropping pill;”⁸⁷ it was believed by the Khmer Rouge to cure many kinds of disease. The Khmer Rouge claimed that modern or western medicines were more harmful than beneficial.⁸⁸ However, KR medical treatments were proven ineffective based on accounts from survivors. Doctors who had been trained in the former regime were forbidden to practice. Instead, the Khmer Rouge recruited young medics to learn from the former doctors. Those young inexperienced medics were the children of party members, like the daughter of Ieng Sary, children of base people and revolutionary youths.⁸⁹ After the trainees had acquired only basic knowledge, they replaced the skilled doctors who were sent to work in the fields as laborers, along with everyone else. A village chief told Doctor Mey Samedi, “Now you are no longer a doctor, you are an average citizen of *Angkar*.”⁹⁰ The Khmer Rouge was afraid that the former doctors would use their medical knowledge to undermine the revolution, as suggested by Doctor Mey Samedi in his memoir. He described how one KR cadre became very alarmed when he woke up and saw that he was being treated by him.

D. Decimation of the Prison Population

According to the testimony of civil parties and witnesses, and the confessions of prisoners at S-21 (which was the primary detention and torture center in Phnom Penh), *Angkar* could arrest or detain people for innumerable reasons, some of which included betraying the collective consciousness; being lazy and careless; mistreating or breaking the collective farming tools or other materials of *Angkar*; disobeying the rules of *Angkar*;

⁸⁷ The rabbit dropping pill, which has a dark color like rabbit’s waste, was produced in the DK period to cure disease. It was believed to cure many kinds of diseases by the KR.

⁸⁸ Becker, *When the War Is Over*, 220.

⁸⁹ Ibid.

⁹⁰ Mey Samedi, *Survivre pour participer a faire vivre*, Khmer version, 2000, 65.

obstructing the production plan; or being a spy for Vietnam, the U.S.A (CIA), or Russia (KGB). Prisoners were forced to implicate other people with whom they were affiliated. The spouses and children of prisoners were also tortured and smashed (killed). In response to a question from the Prosecutor during testimony on June 22, 2009, Duch replied that children who accompanied their parents [to S-21] were separated from them. The parents were detained and the children were executed. Some children were immediately sent to be killed at Pohnear Yat High School. One hundred and sixty children were killed, based upon documents from the field. They were severely mistreated by being deprived of food.⁹¹

In testimony on June 25, 2009, Duch explained to the prosecutor that the small children of prisoners could be the enemies of *Angkar*. Thus he had been given orders to kill them along with their parents so that they could not take revenge.⁹² This strategy is reflected in the KR saying—*chik smao trauv chik teang ruks*—“to destroy the grass you must pull out the roots otherwise the grass will grow again.” *Angkar* was afraid those young orphans would take revenge against them, and so they chose to uproot [kill] them, even though they were very young and innocent.

Many prisoners never knew what crime they had committed to cause their arrest. For instance, one female survivor from S-21 and S-24 testified that she did not know what she had done wrong. She noticed that people on her team were disappearing one by

⁹¹ Transcript of Trial Proceeding-Kaing Guek Eav “Duch,” Case File N0 001/18-07-2007-ECCC/TC, 22 June, 2009, Trial Day 31, 9.

⁹² Transcript of Trial Proceeding-Kaing Guek Eav “Duch,” Case File N0 001/18-07-2007-ECCC/TC, 25 June, 2009, Trial Day 34. 7.

one, and eventually she was also arrested.⁹³ On April 1, 2013, when Trial Chamber Judge Cartwright asked Duch about the treatment of female inmates, Duch stated that 1,698 women were executed at S-21 prison alone.⁹⁴ Duch, the head of S-21, stated that the majority of those women were arrested due to their guilt by association with male detainees. Those women, especially the ones who worked within the ranks of the Communist Party of Kampuchea (CPK), were tortured in S-21 to obtain confessions, even though they had done nothing wrong.⁹⁵ There was no judicial system to seek the truth or define right and wrong for the population. If someone was labeled an enemy of *Angkar*, they were fated to be smashed and thrown into the mass graves. Throughout the country, there were at least 19,733 mass graves (in 388 clusters) and 196 security offices (prisons).⁹⁶

E. Distortion of Cultural Norms and Gender Crimes

In Cambodia, women traditionally enjoyed a degree of autonomy and relative gender equality. Derks, citing Ebihara, stated, “The relative positions of male and female, husband and wife are virtually equal.”⁹⁷ Cambodian women have economic autonomy in managing household finances and equal rights of inheritance.⁹⁸ However, the strict code of conduct for women, called *Chbap Srey*, was written in the nineteenth

⁹³ Civil Party Chin Met testified before the court on July 09, 2009 in Trial of Kaing Guek Eav “Duch” July 9, 2009, accessed June 20, 2013, <http://vimeo.com/40176324>.

⁹⁴ Transcript of Trial Proceeding- Kaing Guek Eav “Duch,” Case File No 001/18-07-2007-ECCC/TC, 16 June 2009, 0913H, Trial Day 29, 64.

⁹⁵ Ibid.

⁹⁶ “Mapping Project: 1995 to Present,” DCCAM, accessed January 12, 2013, <http://www.dccam.org/Projects/Maps/Mapping.htm>.

⁹⁷ Annuska Derks, *Khmer Women on the Move: Exploring Work and Life in Urban Cambodia*, (Honolulu: University of Hawaii Press, 2008), 39.

⁹⁸ Ibid.

century and advises that female sexuality is considered dangerous.⁹⁹ This concept is also exemplified in Cambodian literature to educate society regarding the value of women, based upon proper behavior and activities. Consequently, strict sexual mores, with an emphasis on virginity, are important in maintaining the status of women within the family and community. Women and girls are considered to be guardians and symbols of culture and tradition.

In an attempt to restore the equality between the sexes and to maintain the pureness of female behavior, which DK leaders felt had been impaired during the Sihanouk and Lon Nol periods, DK required men and women to toil equally in the agricultural fields and in the army. According to Article 13 of the Constitution of Democratic Kampuchea, men and women were considered equal. As Judy Ledgerwood has argued, equal rights during the Khmer Rouge regime meant equal labor and equal suffering.¹⁰⁰ A similar finding was expressed in Kalyanee Mam's research in which she states that the DK policy granting equality of the sexes was not to remove domestic burdens from women or protect sexual rights of women, but instead to impose DK's own oppressive authority over women by controlling their behavior, sexual rights and freedom, and family and community bonds.¹⁰¹ Chin Met testified that she was conscripted as a young female soldier. She tried to escape from the Women's Unit to go back home, but the KR forced her to return to her unit and threatened to punish her

⁹⁹ Trudy Jacobsen, *Lost of Goddesses: The Denial of Female Power in Cambodian History*, (Copenhagen, Denmark: NIAS Press, 2008), 285.

¹⁰⁰ Judy Ledgerwood, "Death, Shattered Families, and Living as Widows in Cambodia," 70-71.

¹⁰¹ Kalyanee Mam, "Democratic Kampuchea (1975-1979): Women as Instruments for Social Change," (Phnom Penh: Documentation Center of Cambodia, 2000), 47.

severely if she ran away again.¹⁰² She went through both physical and weapon training, including dismantling a gun, learning to shoot different types of guns (including heavy weapons), and clearing mines.¹⁰³ Young girls (*mit neary*), who marched into Phnom Penh on 17 April 1975 to liberate the city, carried heavy arms and backpacks like male soldiers and could fight and shoot like men in the battlefield. As Alex Hinton has argued, the role of women changed from being mothers, family caretakers, and managers of household finances to that of revolutionary zealot.¹⁰⁴ Women were employed in a wide range of fields during DK: medicine, manufacturing, military support units and female labor units (*kang chalet neary*), agriculture, and village chief. Specific examples of female DK leaders include district chief Yeay Chaem, Minister of Social Affairs (Ieng Thirith, wife of Ieng Sary, the Minister of Foreign Affairs and Minister of Education), and YunYat (wife of Son Sen, the Minister of Defense).

DK strongly felt the purity of Cambodian women had been destroyed by foreign influences during the Sihanouk and Lon Nol regimes. As Jacobsen quoted from the testimony of Peang Sophi, “Western influence, identified as long hair and fashions such as flared trousers and mini-skirts, was equated with the lax morality and corruption of the Khmer Republic and *Sangkum Reastr Niyum* periods.”¹⁰⁵ DK strictly controlled the nature of relationships between men and women. To maintain discipline among the cadres, the DK leaders established twelve rules for correct behavior. Rule number six was

¹⁰² Civil Party Chin Met testified before the court on July 09, 2009 in Trial of Kaing Guek Eav “Duch” July 9, 2009, accessed June 20, 2013, <http://vimeo.com/40176324>.

¹⁰³ Ibid.

¹⁰⁴ Alexander Laban Hinton, *Why Did They Kill?* Cambodia in the shadow of genocide, Berkeley, CA: University of California Press, 2005, 193.

¹⁰⁵ Trudy Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodian History*, (Copenhagen, Denmark: NIAS Press, 2008), 222.

“do not behave inappropriately toward women.”¹⁰⁶ Men and women were not permitted to express love or have a romantic relationship. Many women and girls taken to S-21 had been accused of committing moral offenses by seducing male cadres, which was believed to cause disruption within the Party. For instance, Bophana, a prisoner at S-21, was accused of having been a prostitute in the former regime and having committed a moral offense by having intimate relations with her lover, Deth, a cadre in the Northern Zone. The Khmer Rouge felt that tolerating moral offenses would set a bad example and would undermine the progress of the revolution.

Despite DK’s rule number six, party cadres, soldiers, communal officials, and others who had the power to control people committed widespread surreptitious rape. One female civil party related, “I was always worried about my 19-year-old daughter, because she was young and innocent and was assigned to work out of my sight. In our culture, the primary concern of females is to be safe from sexual crimes, mainly rape.”¹⁰⁷ She had to find ways to protect her daughter by asking her relatives to watch over her.

During DK, rape and gender-based crimes occurred secretly. Victims of those crimes chose to remain silent to avoid being charged with a moral offense, which was subject to severe punishment by *Angkar*. Michael Vickery argued that Democratic Kampuchea monitored sexual morality much more strictly than the previous regime.¹⁰⁸ However, based on research on gender-based violence during the Khmer Rouge regime, which was conducted in November 2011 by the Cambodian Defenders Project, more than six of ten informants (65.4 percent) cited having knowledge of rape during DK. More

¹⁰⁶ Trudy Jacobsen, *Lost Goddesses: the Denial of Female Power in Cambodian History*, 223.

¹⁰⁷ Interview Civil Party Im Sunty, August 22, 2012.

¹⁰⁸ Michael Vickery, *Cambodia 1975-1982*, (Chiang Mai, Thailand: Silkworm Books, 1984), 187.

than a quarter of informants (28.8 percent) witnessed rape, and one respondent reported being raped during the regime.¹⁰⁹ Furthermore, gang and mass rape also occurred during the Khmer Rouge regime, especially before executions. Based on research, mass rapes were perpetrated against families, new people being purged, and the Vietnamese.¹¹⁰

4. Population Decline and Skewed Sex Ratios

During the Khmer Rouge years, the male population was reduced significantly as a result of forced labor, forced conscription to fight against Vietnam, starvation, lack of proper medical care, imprisonment, torture, and execution. Based upon ECCC investigations, during the nearly four-year rule of the regime, it is estimated that 1.7 to 2.2 million people, out of a population of 8 million, died. During the civil war in the PRK years, death tolls remained high due to the continued shortages of food and medicine, lack of medical facilities, land mines, and malaria. The Cambodian government's estimate regarding deaths from overwork states, "In March 1986, 30,000 people died since the beginning of the work initiative."¹¹¹ Some people who survived the KR regime were not fortunate enough to survive the K.5¹¹² defense initiative and the subsequent civil war. Large numbers of men were disabled and many women became widows at a young age, raising children alone without any proper assistance from the government. In her ethnographic research entitled *A Cambodian Village under the Khmer*

¹⁰⁹ Katrina Natale, "I could feel my soul flying away from my body: A study on gender-based violence during Democratic Kampuchea in Battambang and Svay Rieng Provinces," Phnom Penh: Cambodia Defenders Project, 2011, 27.

¹¹⁰ Natale, "I could feel my soul flying away from my body: A study on gender-based violence during Democratic Kampuchea in Battambang and Svay Rieng Provinces," 37.

¹¹¹ Etcheson, *After the Killing Fields: Lessons from The Cambodians Genocide*, 27.

¹¹² According to Craig Etcheson on *After the Killing Fields: Lessons from The Cambodians Genocide*, the "K" may refer to the first initial for *Kar Karpier*, meaning "defense" in Khmer. It was suggested that K.5 designates the fifth in the series of Cambodian Defense plans. K.5 started to launch in 1984. (Etcheson, *After the Killing Fields: Lessons from The Cambodians Genocide*, 22).

Rouge, 1975-1979, May Ebihara interviewed people she had known before the Khmer Rouge regime. Only half of them had survived, and about 40 percent of the adult women were widows.¹¹³ In another survey dated 1980, in an article entitled “After the Nightmare: the Population of Cambodia,” by Judith Banister and Paige Johnson, Cambodia’s population had only 86 males per 100 females. Large numbers of male deaths and the general loss of population created a shortage of the labor necessary to restore the country’s economy, which was based primarily on agriculture.¹¹⁴ In Sobay Village, fifty-six percent of the villagers who were killed during the KR regime were males. The high numbers of women heading households provided women with increased opportunities to play a significant role in rebuilding society, but the skew in the sex ratio also caused the value of women to decline.

5. Legacies of the DK and PRK for Women

Although the DK regime was overthrown by Vietnamese troops and the Cambodian United Front on January 7, 1979, it left a lasting and significant negative impact on the lives of Cambodians due to the devastation of the country’s infrastructure. The economy was at a standstill. There were hordes of refugees, a starving and exhausted population in need of medical care, orphans in need of placement, and in general, a traumatized population in need of healing. Cambodia had become one of the most poverty-stricken countries in the world.

¹¹³ May M. Ebihara, “A Cambodian Village under the Khmer Rouge, 1975-1979,” in *Genocide and Democracy in Cambodia: Khmer Rouge, The United Nations and The International Community*, ed. by Ben Kiernan, (New Haven, CT: Yale University of Southeast Asian Studies, 1993), 58-59.

¹¹⁴ Banister Judith and Paige Johnson, “After the Nightmare: The population of Cambodia,” in *Genocide and Democracy in Cambodia: Khmer Rouge, The United Nation and The International Community*, ed. by Ben Kiernan, (New Haven, CT: Yale University of Southeast Asian Studies, 1993), 67.

Ben Kiernan quoted Jean-Pierre Gallois, the first western reporter who entered Cambodia after the fall of the Khmer Rouge in March 1979:

The Cambodia that survived Pol Pot is like a dismembered body that is trying to come back to life. Its economy is shattered, its communication is severed. There is no drinking water, no telephone, no mail service, no transport, no registry office, no money, no markets, hardly any electricity, hardly any schools, hardly any medical dispensaries. The city is so quiet that bird song has a sinister ring to it. Its residents survive like nomads by eating roots, wild fruit, leaves and fish, and sometimes rice and flour distributed by the authorities... Only faith and hope can save the Cambodian people from extinction.¹¹⁵

Based on this description, we realize the extent of the difficulties Cambodian people endured, including hunger, disease, exhaustion, and trauma. The tragedy that befell the country was later featured in the Academy Award-winning Hollywood film, *"The Killing Fields."* This miserable nation was denied sustainable aid as punishment for the Vietnamese occupation, which began on Christmas day, December 25, 1978, with the taking of Phnom Penh on January 7, 1979. The country was then renamed the People's Republic of Kampuchea (PRK). For decades, the KR continued to wage a guerilla war from its stronghold in the western part of the country. Finally, the country witnessed peace after the election in 1998.

The prolonged war and mass atrocities that took place in the country cost the lives of many men who were involved in armed combat, leaving traumatized women and children behind. Women took on the burden of increased physical work in agriculture, industry and commerce, as mentioned by Boua Chanthou in her work, *Women in Today's Cambodia*.

¹¹⁵ Ben Kiernan, Introduction to *Genocide and Democracy in Cambodia: Khmer Rouge, the United Nation and the International Community*, ed. by Ben Kiernan, (New Haven, CT: Yale University of Southeast Asian Studies, 1993), 10.

The speech of Heng Samrin, President of PRK, in the Fifth Party Congress, addressed the labor shortage as an obstacle to Cambodia's economic growth. Thirty-five percent of households were headed by women and sixty percent of farmers were women.¹¹⁶ They had to bury their trauma and focus on raising their children and orphan relatives under very harsh conditions. The UN sanctions and denial of aid through economic and trade embargos by the U.S. and other members of the international community weighed heavily on Cambodia at that time. Indeed, the economic sanctions punished those women who returned to their respective villages with empty hands, destroyed homes, and lost property.¹¹⁷ Cambodian women have endured the very tough challenge of reconstructing their lives with nothing but their bare hands.

The ensuing civil war in the 1980s resulted in conscriptions of soldiers on both sides in an effort to wrest power from the other. Women again suffered the loss of family members, both male and female, to civil war. People living within and near the KR zone found themselves trapped in a tiger's cage. A former female KR soldier said she remained within the Khmer Rouge zone because she was warned of the cruelty of the Vietnamese troops, who were said to execute or behead the KR. She believed and supported the KR, until the KR disarmed and engaged with the government peace process in 1997. She regretted having spent almost all of her teenage and adult life working for the regime, with no discernible result.¹¹⁸

People living in the central part of the country near Phnom Penh were under PRK control. They also suffered from military conscription due to the government's plan to

¹¹⁶ Banister and Paige, "After the Nightmare: The Population of Cambodia," 105.

¹¹⁷ Boua, "Cambodia: Can Women Survive the New "Peace?," 19.

¹¹⁸ Interview with former Khmer Rouge soldier in Malai in October 30, 2010 in Outreach Project of DC-Cam.

protect the nation. During almost two decades of social unrest along the borders between PRK and Khmer Rouge territory, women faced tragedy a second time when their husbands, children, and relatives (male and female) were conscripted to fight against the Khmer Rouge and to support the K.5 defense plan.¹¹⁹ According to the plan, males from 17 to 45 years were required to serve the country by building border fortifications. Due to corruption, there was insufficient labor to accomplish the work plan, and some women, as well as younger and older men, were sent for K.5 duty.¹²⁰ Women who were not sent to assist the plan had to work harder at home to support the family's living conditions during the absence of their husband. They also had to send food and medical supplies to their husbands and relatives to the extent possible. They had to save or borrow from others to buy non-perishable food and medicine for their loved ones who had been sent into the forest, where many people died by contracting malaria and stepping on land mines. Some women depleted their savings to bribe authorities so that their husbands or close relatives would not have to serve K.5 duty, or they would hire other people to take their places. During that time, the living conditions for those conscripted were reminiscent of the KR years—scarcity of food, no health service, no supplies, no shelter. Some people did not even have a hammock and were forced to sleep on the ground. The forest was malaria-infested and full of land mines. Those workers were victims of the government's plan and many died under tragic circumstances.

The creation of *krom samaki* (solidarity groups) in early 1980 resulted in five to twenty families working together to ensure that each group had enough labor, draft animals, and agricultural supplies. The yields from the teams were divided based upon

¹¹⁹ Etcheson, *After the Killing Fields: Lessons from The Cambodian Genocide*, 22.

¹²⁰ Ibid., 25.

input labor.¹²¹ Boau wrote that these solidarity teams helped women who were in need of labor because their male relatives had been killed or died during the DK period. It was beneficial for families in rural areas, for they could better assist each other in planting crops; however, it was not really helpful for those who lived in the cities, where many people operated small businesses independently. Even though their lives had become nearly unbearable, Cambodians had to persevere and contribute to the process of ending conflict and bringing peace.

6. Call for an End to Civil War - Justice and Reconciliation

In addition to assuming a larger role in economic and public service, women also participated in the political arena. In 1982, millions of survivors submitted petitions requesting the UN to establish a tribunal. Women joined in the excavation of thousands of mass graves and in the government program to encourage the Khmer Rouge defectors to come home. Every evening, wives or relatives of Khmer Rouge who had defected would use radios and buffalo horns to encourage the defectors to return.¹²² They also built memorials across the country near prison sites. Every year on the Day of Remembrance (May 20), they gather together to express their anger, distress and condemnation of the Khmer Rouge. Both women and men joined with monks and nuns in the peace walk (*Dhammamayietra*) led by Preah Maha Gosananda to bring the refugees home from Thailand and in peace outreach efforts in areas formerly controlled by the Khmer Rouge, encouraging the KR to abandon their weapons. Women were also

¹²¹ Chanthou Boua, "Women in Today's Cambodia," *New Left Review* 131(Jan-Feb. 1982): 48, assessed August 12, 2013, <http://newleftreview.org/I/131/chanthou-boua-women-in-today-s-cambodia>.

¹²² "Connecting the Broken Pieces after the Cambodian Genocide: Legacy as Memory of a Nation" Youtube, accessed on February 27, 2013 <http://www.youtube.com/watch?v=vZuD4Fo-ZOc>.

involved in efforts to ban land mines and illegal logging.¹²³ Along the route of the *Dhammayietra*, many family members were reunited.¹²⁴ Unlike other movements, Buddhist movements focus on healing and overcoming fear to help participants progress toward a peaceful society. The peace walk began at the Thai border and moved through the Khmer Rouge stronghold, an area full of land mines deep in the forest. Eventually it reached Phnom Penh, where more than 3,000 people, including monks, nuns, women, men, and military, joined the second peace walk.¹²⁵ The non-violent Buddhist teaching drew the attention of local people to the need for peace. The peace walk demonstrated that people need to be able to live in a safe location, without mines or military conflict. Both women and men returned to Cambodia from the refugee sites in Thailand to participate with the government in the election process organized by UNTAC.

7. Struggling to Rebuild New Careers

Vocational training was needed for women in Cambodia so that they could fully participate in the reconstruction of society in the medical, psychological, agricultural and social fields. As Boua mentioned in *Women in Today's Cambodia*, it was necessary to assist women and provide opportunities for them to participate in government work, because the government programs ensuring equality for women were lacking. Even though women had only limited resources, they tried their best to adjust to the situation.¹²⁶ One of the important reasons that women were able to work for the government was because the government lacked human resources in every field and they

¹²³ Kathryn Poethig, "Movable Peace Engaging in the Transitional in Cambodia Dhammayietra," *Journal for the Scientific Study of Religion*, Vol. 41, No.1 (Mar.2002), 24, accessed July 06, 2013, <http://www.jstor.org/stable/1387708>.

¹²⁴ Ibid.

¹²⁵ Ibid., 2.

¹²⁶ Boua, "Women in Today's Cambodia," 61.

were seeking experienced and educated women to work and to train other people. Therefore, women had opportunities to be recruited. Realizing the significant role for women in the development of the country, the PRK promoted gender equality by endorsing equal marital rights, including “measures to alleviate the burden of housewives and ensure them the conditions necessary to participate like men in social activities;” equality in law; and equal pay, in which Article 27 stated that women employed by the state could receive three month’s pay for maternity leave, and nursing mothers could receive a reduction of daily work hours while receiving public welfare as fixed by the state.¹²⁷

According to women with whom I worked on this project, they were all working very hard to avail themselves of these opportunities. In answer to my questions about their living conditions after the KR, everyone had a unique story to tell, and most of them said that they and their mothers were forced to rebuild their lives from scratch. Ten of the thirty women I interviewed were civil parties who had the knowledge and skills to be recruited for employment by the government and private sectors.

Civil party Sunty stated that she is raising seven children, with ages spanning college to primary school. She does not know how to cope without her husband. She said, “What can I do with seven children under my supervision?” She looked for a job in the government, but she heard that they did not accept people with many children, so she lied and said she had only four children. She wondered why the government did not want to employ people who had many children, because she felt those people should be given

¹²⁷ Trudy Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodian History*, (Copenhagen, Denmark: NIAS Press, 2008), 242.

priority based on the increased needs of their family. She was uncertain, but felt the reason might be because of the higher salary, rice and supplies. At that time, employees received rice, fabric, food, gasoline, shampoo and other basic needs, in addition to their meager salary. Children of government employees also received compensation from the government.

Notwithstanding these major advances in the economic and political contributions of women in Cambodia, their social status declined.

8. Decline in the Value of Women

Many women were forced to remain single due to the skewed sex ratio and resultant shortage of men. After the DK period, men were scarce and many women could not find suitable men to marry. Some women agreed to marry as a second wife in order to have company; for them it was better than living alone.¹²⁸ Based on Ledgerwood, the value of women declined due to the imbalance in the sex ratio and the increased migration of rural women seeking work in the cities.¹²⁹ These social changes defined a new role for Cambodian women which required them to strike a balance between culture, social life, and their role as the breadwinner of the family. However, these young girls were not considered pure in the eyes of conservative villagers in the countryside, because some of them ended up being abused by male counterparts and some were tricked into becoming *srey* (concubines) for officials of the government and various NGOs. Due to economic necessity and their attraction to the modern, high-tech lifestyle of the city, a lot

¹²⁸ Boua, "Women in Today's Cambodia," 47.

¹²⁹ Judy Ledgerwood, "Death, Shattered Families, and Living as Widows in Cambodia," in *Plight and Fate of Women during and following Genocide*, ed. Samuel Totten, Vol.7 of Genocide: A Critical Bibliographic Review, (Piscataway, NJ: Transaction Publishers, 2009), 73.

of women were happy to accommodate those male counterparts. However, the virginity and pureness of the girls was important for the status of the family and for the girls themselves to remain eligible for marriage.

As a widow working in a man's world, Civil Party Sunty remarked that she and her young widow colleagues were often teased by men. Not knowing the fate of her husband was a painful burden compounded by the fact that some men had no appreciation for the hardship that women had to endure after the war years. One man said to her, "You are a *poh maay*, (meaning widow), but I am *knang maay*," a teasing insult which implied that widows had few options for marriage, while he could easily choose a new wife as he wished. She found the comment very humiliating.

Even though women were recruited to work in a wide variety of fields, their value seemed to be diminished due to the high imbalance in the sex ratio. Some jobs that women were doing were not really valued by their communities or by society-at-large. Women worked in NGOs, factories, rubber plantations, government offices, the military (on the front line and as members of military support teams), and in the markets (managing businesses at home and on the street, selling food and fruit). Women found it difficult to strike a balance between cultural norms, their social milieus, their work lives, and their new roles as providers for their families. After the war, as women took advantage of opportunities to work in non-traditional roles outside of the home, they became empowered and eventually began to enjoy improved rights within society.

9. Improvement of Human and Gender Rights

Throughout the history of Cambodia, the country's population has been subjected to many types of absolutist and authoritarian governments, including foreign colonization, monarchy, and communist rule. Human rights concepts were seldom addressed by the political agendas of those states. The worst human rights abuse in the history of the country was during Democratic Kampuchea, from 1975-1979. As mentioned earlier, recognizing the need for women to contribute to the labor force, the PRK promoted gender equality by endorsing equal rights for men and women in marriage (“to alleviate the burden of housewives and ensure them the conditions necessary to participate like men in social activities”), equality in law, and equal pay, all of which are inscribed in Article 27.¹³⁰ During the peace agreement, the government took political steps to ensure human rights and gender rights. Those political steps were initiated by the Peace Agreement in 1991.

Human rights were introduced to Cambodia through the Paris Peace Agreement of 1991 and United Nations Transitional Authority of Cambodia (UNTAC) in 1993. The primary focus of the Peace Agreement was to prevent the recurrence of past violence and to rebuild the country in a climate of respect for human rights and the Rule of Law. The nature of human rights was included in the Paris Peace Agreement in Article 15 under Part III on Human Rights:¹³¹

¹³⁰ Jacobsen, *Lost Goddesses: The Denial of Female Power in Cambodian History*, 242.

¹³¹ (1) To this end,

(a) Cambodia undertakes:

- To ensure respect for and observance for human rights and fundamental freedoms in Cambodia;
- To support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms;

- (1) All persons in Cambodia and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments.

In addition to the human rights section of the Peace Agreement, the Supreme National Council of Cambodia (SNCC), which was the council authorized to represent Cambodia during the transition period, also signed the Convention on the Rights of the Child, the Convention and Protocol relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment.¹³² Last but not least, in order to ensure that the new government protected human rights based on these principles, the concept of fundamental human rights had to be inscribed in the Constitution of Cambodia.¹³³ In Section E of Article 16, Human Rights: UNTAC will develop a program of human rights education, promote understanding of human rights, investigate human rights complaints, and correct the abusive acts.¹³⁴

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- To take effective measures to ensure that the policies and practices of the past shall never be allowed to return;
 - To adhere to relevant international human rights instruments;
- (b). the other signatories to this Agreement undertake to promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments and the relevant resolutions of the United Nations General Assembly, in order, in particular, to prevent the recurrence of human rights abuses.

¹³² Judy L. Ledgerwood and Kheang UN, "Global concepts and local meaning: human rights and Buddhism in Cambodia," *Journal of Human Rights*, 2, no. 4(December 2003): 531-549, 533.

¹³³ 2: Cambodia's tragic recent history requires special measures to assure protection of human rights. Therefore, the Constitution will contain a declaration of fundamental rights, including the rights of life, personal liberty, security, freedom of movement, freedom of religion, assembly and association, including political parties and trade unions, due process and equality before the law, protection from arbitrary deprivation of property or deprivation of private property without just compensation, and freedom from racial, ethnic, religious or sexual discrimination. It will prohibit the retroactive application of criminal law. The declaration will be consistent with the provisions of the Universal Declaration of Human Rights and other relevant international instruments. Aggrieved individuals will be entitled to have the courts adjudicate and enforce these rights.

¹³⁴ The Constitution of Cambodia, accessed May 28, 2013 <http://www.constitution.org/cons/cambodia.htm>.

The global concept of human rights was enshrined within the Cambodian Constitution, ensuring that human rights concepts are incorporated into the highest level of legal code of Cambodia. However, the global concept of human rights that UNTAC attempted to introduce through a functioning independent judicial system, with respect for prisoners' rights during the peacebuilding mission through monitoring and reviewing the court cases and training judges, was found to have been unsuccessful by Hughes, the author of *UNTAC in Cambodia: the Impact on Human Rights*, wherein he states that the attempt to respect human rights (especially prisoner's rights) led to difficulty, danger, and social unrest.¹³⁵ The Hun Sen government also considered the human rights initiatives of UNTAC to be extremely dangerous for maintaining social order.¹³⁶ Based on a government press source, during the UNTAC transitional period, a high crime rate resulted from UNTAC's policies of releasing serious criminals and prohibiting the placement of prisoners in solitary confinement with shackles. Consequently, criminals had little fear of being imprisoned.¹³⁷ In its attempt to restore social order in Cambodia, United Nations experts tried to apply the global concept of human rights as it pertains to respect for prisoners' rights. However, this policy ignored the fact that Cambodia had endured decades of war and neither government officials nor the general population were willing to grant rights to offenders who raped, killed, or committed other atrocious crimes. "Vernacularization on the Ground," an article by Peggy Levitt and Sally Merry, stresses that more attention should be paid to cultural circulation and translation.¹³⁸ In

¹³⁵Judy L. Ledgerwood and Kheang UN, "Global concepts and local meaning: human rights and Buddhism in Cambodia," 534.

¹³⁶ Ibid.

¹³⁷Judy L. Ledgerwood and Kheang UN, "Global concepts and local meaning: human rights and Buddhism in Cambodia," *Journal of Human Right* 2, No. 4(December 2003): 533.

¹³⁸ Peggy Levitt and Sally Merry, "Vernacularization on the ground local uses of global women's rights in Peru, China India and the United States," *Global Networks* 9, 4(2009):444.

order to ensure effective communication, culture should be placed in the center of the analysis and the circulation and translation should be tracked over time. The article also quoted Tom Boellstorff, using the concept of ‘dubbing culture,’ to connect local/national/global interactions in conversation.¹³⁹ Even though the project to protect prisoners’ rights was initially criticized by the government and people of Cambodia, UNTAC eventually found an effective way to convey the global concept of human rights through the creation of a local non-governmental organization.

The concept of human rights was conveyed widely through education programs disseminated through mass media campaigns, television, radio, and other printed materials and training programs at schools, universities and social organizations. UNTAC also funded local human rights NGOs so that they could create their own human rights education programs; the creation of human rights NGOs was regarded as an important legacy of UNTAC.¹⁴⁰ There were hundreds of NGOs established during the UNTAC period: thirty of them were NGOs promoting human rights, including Association des Droits de l’ Homme au Cambodge (ADHOC), La Ligue Cambodgienne pour la Promotion et la Defense des Droits de l’ Homme (LICADO), and the Cambodian Institute for Human Rights (CIHR).

As Levitt and Merry argued, the process of vernacularization often has frictions and will not always flow smoothly. The human rights concepts must be reframed to fit to the justice and gender ideologies and will be dependent upon the vernacularizers who convey and translate the ideas, making the ideas flow back and forth.¹⁴¹ According to

¹³⁹ Ibid., 445.

¹⁴⁰ Ibid., 537.

¹⁴¹ Peggy Levitt and Sally Merry, “Vernacularization on the ground local uses of global women’s rights in Peru, China India and the United States,” *Global Networks* 9, 4(2009):449.

Ledgerwood and the UN, the meaning of human rights is transformed as it passes through layers of society to the local level. The authors argued that “the interface between global discourses or ideoscapes of a concept such as human rights and local meaning result not in conceptual homogeneity but in heterogeneity.”¹⁴² The global concept of human rights merge with the Khmer cultural concepts linked to Theravada Buddhist teachings, which contain a human rights component.¹⁴³ The authors quoted Kassie Neou, a Cambodian human rights advocate, who said “the richest human rights tradition in Cambodia is that of Theravada Buddhism, the dominant religion, its emphasis on ‘compassion, tolerance, and nonviolence.’”¹⁴⁴ The human rights material used and disseminated by Cambodian Institute of Human Rights (CIHR) has combined with the Buddhist teachings. The survey found this material effective for reaching out to local people who did not have a concept of global human rights, but it was found to be less effective in training government officials.¹⁴⁵

Cambodian leaders Hun Sen and Norodom Ranariddh shared the same view regarding human rights. They argued that because Cambodia had just emerged from many decades of war, the country needed to give priority to social well-being, especially social stability and economic growth. In 1994, Ranariddh specifically stated, “It is easy to talk about human rights and freedom of expression from the comfort of studios in London, Paris, or New York, but in Cambodia, addressing economic necessities is more important than freedom of expression.”¹⁴⁶ He added, “Discipline is more essential to our

¹⁴² Judy L. Ledgerwood and Kheang UN, “Global concepts and local meaning: human rights and Buddhism in Cambodia,” 540.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid., 544.

¹⁴⁶ Ibid., 538.

society than democracy, though we have a need for both; the Western brand of democracy and freedom of the press is not applicable to Cambodia.”¹⁴⁷ Therefore, the universal notion of human rights has to be applied in accordance with the political, social, and economic circumstances of the country. In the context of Cambodian society, which has been devastated by many decades of war, the traditional political patron-client system wherein powerful elites provide protection and stability to a weak client (the citizens who lived amid insecurity for years) in exchange for their services and loyalties, are very necessary.¹⁴⁸ The concept of human rights has not been extended to criminals or enemies of the state, and consequently, criminals can be tortured or killed by the populace without intervention by the authorities.¹⁴⁹ The Cambodian judicial system is ineffective, however, extra-judicial torture and killing is still occurring in the country. For instance, drivers escape an accident scene if they have injured people to protect their own safety, otherwise they would be tortured or killed by the angry mob.

The new Constitution of the Kingdom of Cambodia, promulgated on 21 September 1993, promised to provide equality to all citizens, regardless of race, color, or sex. The law grants everyone the same rights and freedoms under the Rights and Obligations of Khmer Citizens under Article 31. Moreover, the Constitution also recognizes and respects human rights as outlined in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to the rights of humans, women, and children.¹⁵⁰ Language contained in the Cambodian

¹⁴⁷ Ibid.

¹⁴⁸ Marie Laberge, “Peacebuilding and NGOs in Cambodia,” (paper presented at Institute of Asian Research, University of British Columbia, Graduate Conference, February 5-7, 2004), 2.

¹⁴⁹ Judy L. Ledgerwood and Kheang UN, “Global concepts and local meaning: human rights and Buddhism in Cambodia,” 538.

¹⁵⁰ The Constitution of Cambodia, accessed on May 28, 2013, <http://www.constitution.org/cons/cambodia.htm>.

Constitution regarding human rights distinguishes Cambodia as one of few Southeast Asian nations that fully recognizes the human rights of her citizens.¹⁵¹

In addition to the right to vote, to stand as a candidate for election, and to participate in the political, economic, social and cultural life of the nation, the Constitution included other important issues such as human trafficking and exploitation; freedom of the press, expression, and assembly; workplace discrimination; maternity leave; and employment opportunities for rural women who need to support their families.¹⁵² All forms of discrimination against women have to be abolished, and exploitation of women has to be prohibited in employment, marriage, and family matters.

The government of Cambodia also signed the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 1992, and the Ministry of Women's Affairs was formed two months after the signing of that convention.¹⁵³ Under CEDAW, women are assured of their civil rights and legal status in areas such as political participation; non-discrimination in education, employment, economic and social activities; equal rights with regard to the choice of spouse; parenthood; individual rights and economic rights. It should be noted that a critical legal aspect of the Cambodian Constitution is recognition of and respect for international human rights agreements inscribed in Article 31.1;¹⁵⁴ therefore, the CEDAW Convention will become domestic law. This is a special component of the Constitution which incorporates the concept of international human rights, including women's rights, into the local law. As a signatory

¹⁵¹ Judy L. Ledgerwood and Kheang UN, "Global concepts and local meaning: human rights and Buddhism in Cambodia," 538.

¹⁵² Article 45 in The Constitution of Cambodia, accessed May 28, 2013
<http://www.constitution.org/cons/cambodia.htm>.

¹⁵³ Jacobsen, *Lost of Goddesses*, 259.

¹⁵⁴ Article 31.1 in The Constitution of Cambodia, accessed May 28, 2013
<http://www.constitution.org/cons/cambodia.htm>.

of the CEDAW Convention, Cambodia is required to submit reports, provide information regarding the development of women's rights and the wellbeing of women in the country, accept recommendations from committees to adopt new legislation protecting women's rights such as that combating human trafficking, enforce and revise existing laws to protect women and punish those who commit crimes against women.

Through the support and advocacy of local and international NGOs, the government is committed to promoting gender equality in order to alleviate poverty and create sustainable development. The government also adopted the Law on Prevention of Domestic Violence and Victims Protection on October 2005, as well as the Law on Anti-Human Trafficking and Sexual Exploitation. In addition, the government has formed working groups at the national level to combat the trafficking and sexual exploitation of women and children.¹⁵⁵ Furthermore, the Cambodian government signed the Millennium Declaration, committing to fulfill the Cambodian Millennium Development Goals (CMDG) by measuring the national development performance against the CMDGs and reporting the degree of progress.¹⁵⁶ The Cambodian National Council for Women prepared a five-year strategic plan, Neary Rattanak III (2009-2013).¹⁵⁷

Under the Legal Protection of Women and Girls, there are many effective mechanisms to protect and prevent domestic violence (DV), rape, sexual assault, human

¹⁵⁵ Last Final Strategic Plan CNCW, May 21, 2010, 7.

¹⁵⁶ Neary Rattanak III (2009-2013) focuses primarily on a gender mainstreaming program in national and reform programs and implementation of international conventions: (1) Economic empowerment of women, (2) promotion of women's and girls' education and attitude and behavior change; (3) Legal protection of women and girls; (4) promotion of health, nutrition and combating HIV/Aids among women and girls, (5) promoting women's participation in decision-making in the public and political sector. Last Final Strategic Plan CNCW, May 21, 2010, 8.

¹⁵⁷ "National Strategic Development Plan Update 2009-2013: for growth, employment, equity and efficiency to reach Cambodian Millennium Development Goals," Royal Government of Cambodia, 177-178.

trafficking, and sexual and labor exploitation through existing laws for DV and human trafficking. The strategic plan also includes improving access to social health services for victims of crimes and increasing the number of shelters to care for those victims. Last but not least, another plan to protect Cambodian women is the strengthening of international and regional cooperation through the implementation of an MOU among regional and international committees to prevent human trafficking, labor and sexual exploitation. A comprehensive analysis of the laws and strategic plans prepared by the Ministry of Women's Affairs and the national strategic plan of the government of Cambodia reveals that global gender rights have been incorporated into the domestic law and strategic plans of the country.

Cambodian women are supposed to be highly protected and promoted by law; however, it is difficult to assess the effectiveness of the implementation of those laws and programs by the government. Recognizing the leaders' reluctance to support international standards of human rights (as mentioned by first Prime Minister Prince Norodom Ranariddh who, along with second Prime Minister Hun Sen, agreed to limit human rights since "discipline is more essential in society than democracy, though we have a need for both; the Western brand of democracy and freedom of the press is not applicable to Cambodia."¹⁵⁸ The Cambodian government and ruling leaders continue to view human rights from a different perspective than the international standard,¹⁵⁹ since human rights are considered a threat to their political control. Ledgerwood argued that Prime Minister Hun Sen's government agreed to include the language of human rights in the Paris Peace

¹⁵⁸ Judy L. Ledgerwood and Kheang UN, "Global concepts and local meaning: human rights and Buddhism in Cambodia," 538.

¹⁵⁹ Ibid.

Agreement in order to drive the Khmer Rouge from power.¹⁶⁰ Gender and human rights were honored more on paper than through actual implementation.

In fact, the number of women in politics and decision-making roles is still quite low. In the first National Assembly Mandate in 1993, no women had been assigned to ministerial positions. Even though the percentage of seats held by women in the National Assembly increased from 5 percent in 1993 to 19 percent in 2003 and to 22 percent in 2008, the relative numbers of women are still quite low.¹⁶¹ The number of female senators increased from 13 percent in 2003 to only 15 percent in 2008.¹⁶² Only one woman holds a Deputy Prime Minister's post, and two women are Ministers: Ing Kantha Phavi (Minister of Women's Affairs and Minister of Inter-Ministry Affairs); and Men Samon (Deputy Prime Minister and Minister of National Assembly-Senate Relations and Inspection). However, female civil servants have increased from 32 percent in 2008 to 34 percent in 2011, because the new guideline issued in 2009 required all ministries and institutions to maintain a quota of 20-25 percent women among new government staff.¹⁶³ In the commune-level election of 2007, a total of 1,662 women were elected, accounting for 14.2 percent of the total elected members.¹⁶⁴ There was an increase in the number of women participating in the communal election of 2012, resulting in 2,038 female commune councilors out of 111,459 (18%), which is only 3% higher than the outcome of the 2007 commune election.¹⁶⁵ As the number of women in decision-making roles

¹⁶⁰ Ibid., 533.

¹⁶¹ "Achieving Cambodia's Millennium Development Goals," Ministry of Planning, 2011, 17.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Ibid., 17.

¹⁶⁵ Final Assessment and Report on 2012 Commune Election, The Committee for Free and Fair Election in Cambodia (COMFREL), October, 2012, 47, accessed September 12, 2013 http://www.comfrel.org/eng/index.php?option=com_mypublications&view=list&catid=121&Itemid=1143.

increases at the local level, the problems of women are more likely to be addressed and solved, benefiting women throughout the country.

The low number of women in politics and decision-making roles reflects the low high school graduation rate of females and also the high dropout rate in the early stages of education.

A comparison of three years of data regarding female enrollment versus male enrollment in upper secondary school (2007/2008-2009/2010) reveals that the gap in 2009-2010 was in excess of 20 percent. Many fewer girls attend upper secondary school than boys.¹⁶⁶

The high dropout rate of girls in early education years (before high school) is due to economic hardship within the family, accessibility of the high school, and traditional conservative ideas of denying higher education to girls because it would make them less marriageable, more promiscuous, or more prone to being exploited sexually or in the workplace. Victims of sexual abuse often remain silent due to the social stigma and discrimination they suffer. An old Cambodian saying compares woman and girls to cotton, which is difficult to clean if stained; however, men and boys are compared to gold or gemstones, which can always be polished to their original luster.

Cambodian society's high esteem for the righteous girl (*srey krub lakhena*) and disdain for the immoral girl (*srey kath lakhena* and *srey krouch*) are still prevalent. Society does not consider the "bad" girls to have the same value as normal or "good" girls, and therefore they suffer unfair treatment by society, even by family members. Trudy Jacobsen, who is fluent in Khmer and authored *Lost Goddesses: the Denial of Female Power in Cambodia History*, witnessed this attitude firsthand when she observed a security guard accusing a woman he considered to be *srey krouch* trying to attract a

¹⁶⁶ "Achieving Cambodia's Millennium Development Goals," Ministry of Planning, 2011, 16.

boyfriend in order to receive nice presents. Jacobsen had overheard a completely different story than the guard's accusation. She disregarded the comment about *srey krouch* and challenged the guard by asking, "Doesn't Cambodia now have *settimanous* (human rights)?" He smiled at her and said, "Human rights are not for people who are *srei louk khluen* [women who sell themselves]." ¹⁶⁷

Based on the security guard's stereotype of the woman, it seems she is not sharing the same world as him. He could never consider her as a normal person, deserving of equal rights or equal treatment. This stereotype is not just the thought of one man toward these women; I would argue that it is a general concept of Cambodians who judge women based on their activities and behavior. This kind of thinking limits girls' opportunities for higher education and participation in the public and political spheres to help build society. When those women or girls are labeled impure or stained, their families lose face and it therefore becomes difficult for them to integrate into their own community. Few people in the community will befriend them. Those women indeed need support to rebuild their lives and to prove that they can live as normal people if they are given the opportunity. In Cambodia, women's shelters and counseling services for victims are very limited. Knowledge and awareness of the CEDAW Convention and other laws protecting women and gender rights need to be improved. From a practical standpoint, it is difficult to remedy sexual exploitation and trafficking due to widespread corruption among the police and government officials throughout the country. The problem is further exacerbated by the global materialistic culture, as well as the emergence of high-tech communications, which makes it more difficult to track and prosecute traffickers.

¹⁶⁷ Jacobsen, *Lost Goddesses: the Denial of Female Power in Cambodian History*, 265.

The concept of human rights or gender rights, whereby all people have equal rights regardless of sex, race or religion, is expressed in the Constitution of Cambodia, but the practice is not widely accepted by the majority of Cambodians. The behavior of people in society will only be changed through education and through the participation of more women in the decision-making and political spheres. Women in influential roles can advocate for women to be treated on an equal basis with men, without discrimination. With the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC), Cambodia took a significant step in linking human rights with women's rights. The deliberations of the ECCC provided Cambodian women (as civil parties, complainants, and witnesses) with a forum in which to voice their anguish about the atrocities of the past. However, the court is still a work in progress in the context of women's rights. Even though the ECCC has drawn on the experience and achievements of previous international and national tribunals, it has fallen short of women's expectations in its treatment of rape and gender crimes.

III. Chapter 3: The Exercise of Global Human and Gender Rights in the Cambodian Court System

1. Establishment and Structure of the Extraordinary Chambers in Courts of Cambodia (ECCC)

On June 21, 1997, first Prime Minister Norodom Rannarith and second Prime Minister Hun Sen submitted a letter to the United Nations requesting the assistance of that institution in bringing the former Khmer Rouge leaders, who had committed genocide and crimes against humanity, to justice. The letter stated, “This would bring about national reconciliation, strengthen democracy, and address the issue of individual accountability in contemporary Cambodia.”¹⁶⁸ After three years of advocacy against the return of the Khmer Rouge, the U.S. Congress, under the Clinton administration, finally passed the “Cambodian Genocide Justice Act”¹⁶⁹ in April 1994. The President signed the measure into law in May 1994. This law served as “the policy of the United States to support efforts to bring to justice members of the Khmer Rouge for crimes against humanity committed in Cambodia between April 17, 1975 and January 7, 1979.”¹⁷⁰ A group of U.S. State Department attorneys, including Attorneys Jason Abrams and Stephen Ratner, conducted legal analysis which indicated that the Khmer Rouge could possibly be charged with war crimes, genocide, and other crimes against humanity. With respect to the charge of genocide, they argued: “We find prima facie culpability for acts against religious and ethnic groups, such as the Cham, Vietnamese and Chinese

¹⁶⁸ Peter Bartu and Neil Wilford, “Transitional Justice and DDR: The Case of Cambodia,” International Center for Transitional Justice, (June 2009): 24.

¹⁶⁹ Craig Etcheson, *After the Killing Fields: Lessons From the Cambodian Genocide* (Connecticut: Praeger, 2005), 54-55.

¹⁷⁰ Etcheson, *After the Killing Fields: Lessons From the Cambodian Genocide*, 55.

communities, and the Buddhist monkhood.”¹⁷¹ The U.S. State Department conferred with Yale University’s Cambodia Genocide Program, providing funds for documentation, research and training to create an accountability mechanism for the prospective prosecution of Khmer Rouge crimes.¹⁷² The Documentation Center of Cambodia (DC-Cam) was established in January 1995 as the field office of the Cambodian Genocide Program and was tasked with preparing a documentation survey and index, undertaking historical and graphical research, and performing legal training. To date, DC-Cam has supported the court proceedings by providing documentation on an equal basis to the prosecution, defense and civil party lawyers. In addition, DC-Cam has also conducted extensive outreach to local communities in support of victim participation by civil parties and complainants who filed applications with the ECCC.

In 1999, the UN Office of Legal Affairs formed a team to consider options on behalf of the United Nations and the Royal Government of Cambodia, creating a special Khmer Rouge Tribunal Task Force for that purpose.¹⁷³ The government of Cambodia, especially officials of the ruling Cambodian People’s Party (CPP), were afraid that the UN-dominated process might be used to undermine the CPP’s legitimacy and bolster the opposition party.¹⁷⁴ The United Nations and the Government of Cambodia eventually agreed to establish the Extraordinary Chambers in the Courts of Cambodia (ECCC) for the prosecution of crimes committed during the Democratic Kampuchea regime. The court was designed to prosecute the former “senior leaders” and those “most responsible

¹⁷¹ Ibid., 55.

¹⁷² Etcheson, *After the Killing Fields: Lessons From the Cambodian Genocide*, 55.

¹⁷³ Ibid.

¹⁷⁴ Ciorciari, “History & Politics behind the Khmer Rouge Trial,” 73.

for the serious violations of Cambodian and international law.”¹⁷⁵ Crimes which occurred before or after the dates (17 April 1975 to 9 January 1979) would not fall under the jurisdiction of the ECCC. The limitation in the time period for prosecution clearly included the alleged crimes of the DK; however, it also excluded the questionable actions of powerful countries like the U.S., China and neighboring countries, who had considerable influence on events before and after the actual DK regime. These countries were involved in the Cambodian civil war (1970-1975), the U.S. in particular having conducted an aerial bombardment campaign in Cambodia from 1969 to 1973. These actions would not be heard before the Tribunal.¹⁷⁶

Victims and perpetrators alike argued that the ECCC should investigate the time period prior to the DK regime in order to better delineate the circumstances surrounding the rise of the regime and its rule. However, in order to garner international support for the formation of the Tribunal, the ECCC was forced to limit the window of jurisdiction, a decision that disappointed many people.

Initial funding of an estimated \$56 million was approved by the UN and the government of Cambodia for a three-year operation, in which international donors would provide \$43 million and the Cambodian government would cover \$13 million. All funding for the court is voluntary.¹⁷⁷ Unlike other hybrid courts in Sierra Leone or East Timor, where the majority of judges are international, the ECCC is comprised primarily of Cambodian judges assigned by Cambodia’s Supreme Council of Magistracy in accordance with the ECCC Law and Frame of Work of Agreement. The international

¹⁷⁵ Ibid., 78.

¹⁷⁶ Ibid.

¹⁷⁷ Ciorciari, “History & Politics behind the Khmer Rouge Trial,” 78.

judges are appointed by the UN Secretary General.¹⁷⁸ The Pre-Trial Chamber consists of three Cambodian judges and two international judges; the Trial Chamber has three Cambodian judges and two international judges; and the Supreme Court Chamber consists of four Cambodian judges and three international judges.¹⁷⁹ Consensus of the court requires a “supermajority,” in which at least one of the international judges has to agree with any verdict handed down by the court. Based on ECCC rules, Cambodian law and existing judicial procedures must be applied to all cases. In the event of a conflict, international law prevails. In the structure of the ECCC court hierarchy, the Pre-Trial Chamber mediates disputes and processes procedural appeals.¹⁸⁰ Scholars who follow the court have expressed concern regarding the majority status of Cambodian judges, an aspect of the court which lends itself to political interference which could compromise the independence and impartiality of the court.

The Internal Rules of the ECCC create an office of two Co-Prosecutors (one national and one international), working together to do preliminary research and investigation. The role of the Co-Investigating Judges (one national and one international) is to conduct investigations; they have the power to bring persons to justice based on the crimes they allegedly committed. They are also appointed in accordance with the procedures for choosing prosecutors who have high moral character and who have experience in conducting investigations and prosecutions of criminal cases.¹⁸¹ The Internal Rules of the ECCC (Rules of Procedure) were adopted on June 12, 2007, with contentious issues identified as the protocols for participation of foreign defense lawyers

¹⁷⁸ Ibid., 77.

¹⁷⁹ Ibid., 108.

¹⁸⁰ Peter Bartu, & Neil Wilford, “Transitional Justice and DDR: The Case of Cambodia,” 25.

¹⁸¹ Peter Bartu, & Neil Wilford, “Transitional Justice and DDR: The Case of Cambodia,” 109.

and the role of civil parties.¹⁸² Civil parties may participate in the proceedings, but they can only claim collective and moral reparations, not financial reparations. The ECCC applies both common and civil law, and three languages are used in the court—Khmer, English and French—which requires that all documents be translated into three languages.

Throughout the ECCC proceedings, there has been much criticism regarding the limitations on the participation of civil parties, including the delayed establishment of the Victims Unit, the delay in processing the Victim Information Forms, the lack of interest in investigating gender and sexual crimes, and other political interferences.

2. Limitations of the ECCC

A. The Narrow Scope of the Gender Crimes Considered by the ECCC

Gender-based and sexual crimes under the jurisdiction of the ECCC are complicated and controversial. Many arguments have been made suggesting that the ECCC should focus more attention on gender-based and sexual crimes, following in the footsteps of other international tribunals (ICTY and ICTR), which considered the crime of rape as an instrument for genocide and crime against humanity. The ECCC found Duch, the defendant in Case 001, guilty of one rape which occurred in S-21, declaring the rape to be a crime against humanity as torture.¹⁸³ The Supreme Court Chamber, in its decision on appeal in Case 001, concluded that rape did not exist as a separate crime against humanity under international customary law between 1975 and 1979; however, in

¹⁸² Peter Bartu and Neil Wilford, “Transitional Justice and DDR: The Case of Cambodia,” International Center for Transitional Justice, (June 2009): 24.

¹⁸³ “Crimes against Humanity,” ECCC, accessed on June 01, 2013, <http://www.eccc.gov.kh/en/topic/337>.

the context of Case 001, rape could be included as a crime against humanity as torture.¹⁸⁴

Why is rape not charged under ECCC law in Case 002 under the name rape itself?

The prosecution of rape and other sexual crimes at the ECCC, in principle, falls under national and international laws. To put it simply, sexual crimes do not qualify as national crimes in the Internal Rules of the ECCC. Thus, in order for sexual crimes to be prosecuted, they need to be considered crimes of torture. In compliance with international law, prosecuting the crime of rape falls under “crimes against humanity” within ECCC law. However, the Pre-Trial Chamber accepted the request of defense lawyers to omit the crime of rape as a crime against humanity from the Closing Order. Thus, sexual crimes can only be charged as enslavement and torture and other inhumane acts.¹⁸⁵

Based on the Closing Order “Factual Findings—Joint Criminal Enterprise” section, intimate relationships outside of marriage were considered to be against the collectivist approach of the Communist Party of Kampuchea (CPK). Those people who were suspected of “immoral” behavior, including rape, were categorized as “bad elements” or “enemies,” and were often either reeducated or killed.¹⁸⁶ In this context, security center staff (for example at Kraing Ta Chan Security Center) knew that rape was a crime for which they would be punished. Additionally, there is evidence that CPK cadres reported instances of rape to their superiors, describing the perpetrators as “enemies” or “traitors,” as set out in the sections of the Closing Order for Nuon Chea,

¹⁸⁴ Ibid.

¹⁸⁵ “Women’s Hearing: True Voices of Women under the Khmer Rouge: Report on the Proceedings of the 2011 Women’s Hearing on Sexual Violence under the Khmer Rouge Regime,” ed. by Alison Barclay and Beini Ye, Phnom Penh: Cambodian Defenders Project, 2012, 5, accessed September 10, 2013, http://gbvkr.org/wp-content/uploads/2013/01/Report-on-2011-Womens-Hearing_Phnom-Penh.pdf.

¹⁸⁶ Extraordinary Chambers in the Courts of Cambodia, 2010, Closing Order, 521, accessed on March 31, 2013. <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D427Eng.pdf>.

leng Sary and the Tram Kok Cooperatives.”¹⁸⁷ In 2010, in the Closing Order for Case 002, “the Co-Investigating Judges consider that the official CPK policy regarding rape was to prevent its occurrence and to punish the perpetrators. Despite the fact that this policy did not manage to prevent rape, it cannot be considered that rape was one of the crimes used by the CPK leaders to implement the common purpose.”¹⁸⁸

Recent research on gender-based violence in Battambang and Svay Rieng Provinces during Democratic Kampuchea shows that the CPK policy of moral conduct may have been used as a tool by the KR to punish victims and that GBV may have been pushed underground. In some cases, victims of the rape crimes were killed as a result of their involvement in a moral offense (the rape), or women were killed to hide the truth.¹⁸⁹ The respondent in the research, who witnessed the sexually-mutilated corpse and was clearly aware of the crime committed by the KR, mentioned that “for those who wore black, let’s say ‘the leaders,’ it was okay for them to break the law; but for us, the simple people, we could be killed if they discovered that we secretly loved someone or made love with each other.”¹⁹⁰ Research shows that the DK policy was not effective in preventing sexual crimes during the regime; instead it was used to harm or kill women and the truth was hidden because the policy had no checks or balances (aside from death) to assure its effectiveness. In fact, the policy of DK regarding sexual violence punished some people, but did not prevent the crimes from occurring¹⁹¹ because there was no judicial system in which the survivors could lodge complaints. Moreover, women and

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Katrina Natale, “I Could Feel My Soul Flying Away From My Body: A Study on Gender-Based Violence during Democratic Kampuchea in Battambang and Svay Rieng Province,” (Phnom Penh: CDP, 2010), 39.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

girls usually hid the truth about the crimes committed against them in order to avoid being charged with a moral offense by the Khmer Rouge. People who witnessed the crimes did not dare report them and the victims were threatened with death if they dared to do so. One female civil party related that a young girl working next to her was called by local militiamen to change her work location. When she returned, her hair was in disarray; her shirt was unbuttoned; her face was very pale; and her eyes were red and full of tears. The girl told civil party Ting Sokha, “We should leave this place with our mouths shut, otherwise we will be silenced. She clearly understood the fact that she was raped.”¹⁹² Hence, the policy of DK should not be regarded as effective in this case; and the rape crimes in Case 002 should be included in the Closing Order.

Notably, in the Closing Order of Case 002 in 2010, “the legal elements of the crime against humanity of rape have been established in the context of forced marriage.”¹⁹³ Therefore, rape outside of the context of forced marriage was removed from the initial indictment; and the prosecution of other gender-based crimes was not investigated.¹⁹⁴ However, the inclusion of rape under forced marriage in the Closing Order of Case 002 marked a great improvement in the proceedings compared to Case 001. The likelihood of having Case 002 heard before the Tribunal is still uncertain due to the advanced ages of the defendants. Lars Olsen, Legal Public Affairs Officer, stated, “Now that rape under forced marriage is included in the Closing Order of Case 002, forced marriage may or may not be part of future crimes now they have separated Case

¹⁹² Interview with Ting Sokha, Civil Party Case 002, February 25, 2013.

¹⁹³ Extraordinary Chambers in the Courts of Cambodia, 2010, Closing Order, 352, accessed on March 31, 2013. <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D427Eng.pdf>.

¹⁹⁴ Katrina Natale, “I Could Feel My Soul Flying Away From My Body: A Study on Gender-Based Violence during Democratic Kampuchea in Battambang and Svay Rieng Province,” 30.

002 into several trials.”¹⁹⁵ After the Case 002/001 about forced evacuation, there is no indication that forced marriage will be discussed before the court in Case 002/002.

B. Constraints of the ECCC and its Resources

The ECCC sensitivity to gender crimes is constrained by cultural mores and the lack of time and resources to conduct thorough investigations. The ECCC had to prioritize which crimes are most representative of the cruelty and severity of the DK regime, bearing in mind the limited time for prosecution due to the age of the defendants and the large number of crime sites and civil party applicants. Few cases of rape were mentioned by female Civil Parties; they are ashamed to mention the crimes in their written testimonies filed with the ECCC. Cambodian culture is conservative and not open to the discussion of sexual violence against women, and thus rape is considered a very shameful act for the victim, her family, and the community-at-large. Some victims of rape crimes were killed; other victims survived but remained silent, internalizing their suffering and avoiding the inevitable social stigma. Justice for those victims and survivors will not be found within the ECCC. In the trial proceedings of Case 001, few people were interested in testimony about sexual violence against women in S-21 except female Judge Cartwright and civil party lawyers from the Cambodian Defenders Project, particularly Silke Studzinsky. They asked probing questions of Duch about the treatment of women detainees in S-21. Judge Cartwright asked Duch, who was in charge of S-21, about a rape case in S-21 involving his former teacher Deum Saroeun, a CPK party member, in which an interrogator inserted a stick into her vagina. Duch (Case 001 defendant) confessed that the incident had occurred on only one occasion. He told the

¹⁹⁵ Interview Lars Olsen, Legal Public Affairs Officer, ECCC, August 29, 2012.

court that he was not aware of the law at that time. If he had known there was a law, he would have arrested the interrogator and put him in prison. He did not punish the interrogator who committed crimes against his former teacher; however, he no longer allowed that interrogator to question female inmates and instead created a female interrogation team.¹⁹⁶ As chief of S-21, his answer was not a convincing argument for the prevention of future similar crimes. Another case in which a civil party revealed a crime of rape committed against her prompted her lawyer to submit the case to the Trial Chamber. However, the Trial Chamber declined to admit the civil party's evidence about a particular incident of rape, which she claimed happened in S-21, because "these allegations were raised at a late stage in the proceedings, [therefore] evidence relevant to them will be impossible to obtain within a reasonable time."¹⁹⁷

The court was blamed for not taking sexual and gender-based crimes (especially the crime of forced marriage which affected a significant number of victims) into serious account until the investigation was nearly closed, which impeded the justice-seeking process.¹⁹⁸ Silke Studzinsky, International Civil Party Lawyer, also concluded that "the strategy of the ECCC's investigating bodies has excluded consideration of sexual and gender-based crimes."¹⁹⁹ She provided examples of such crimes contained in victim testimonies. Victims were not questioned further regarding the crimes, and there have been no specific investigations to determine how the investigating unit performed their

¹⁹⁶ Transcript of Trial Proceeding- Kaing Guek Eav "Duch," Case File No 001/18-07-2007-ECCC/TC, 16 June 2009, 0913H, Trial Day 29, 64, accessed April 1, 2013.

http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E1_33.1_KH.pdf.

¹⁹⁷ Co-Prosecutors, Kaing Guek Eav, alias Duch, Case No-001/18-07-2007-ECCC/TC Decision on Parties Requests to put certain Matters before the Chamber. Pursuant to Rule 87(2), 14 (Oct. 28, 2009).

¹⁹⁸ Silke Studzinsky, "Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crime before the Extraordinary Chambers in the Courts of Cambodia," in *Gender in Transitional Justice*, ed. by Suanne Buckley-Zistel and Ruth Stanley. (Basingstoke: Palgrave Macmillan, 2012), 100.

¹⁹⁹ Ibid.

tasks.²⁰⁰ She also argued that a gender-sensitive approach should be utilized when investigating sexual and gender-based crimes.²⁰¹ In order for sexual and gender-based crimes to be taken seriously, victims and witnesses must be able to talk about their traumatizing experiences without feeling uncomfortable. This requires well-trained investigators, interpreters, prosecutors and judges, all of whom possess a gender-sensitive attitude.²⁰² The Investigating Judges' response to the Co-prosecutors and civil party representation totally supports the preceding argument of Civil Party Lawyer Silke Studzinsky. Investigating Judges failed to respond to the civil party's request to recruit gender-trained female investigators and interpreters. Moreover, the Co-Investigating Judges did not see the necessity to appoint qualified experts under Internal Rule 31(1) relating to allegations of forced marriage under the jurisdiction of the ECCC.²⁰³ Due to the limited resources for collecting Victim Information Forms (VIF), the ECCC depended heavily on Intermediary Organizations (IOs) to assist with the completion of those forms in Case 001. There were no clear directives from the court regarding completion of the forms. The form is a simple one for educated people; however, it is very difficult for illiterate survivors. Consequently, the IOs found it challenging to assist the survivors in completing the forms. The primary items of interest to the court are executions, starvation, forced evacuation, and forced labor.

The court proceedings of Case 001 benefit from the participation of women, who have a chance to voice their suffering and have their sexual crimes prosecuted. It is

²⁰⁰ Silke Studzinsky, "Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crime before the Extraordinary Chambers in the Courts of Cambodia," 100.

²⁰¹ *Ibid.*, 101.

²⁰² *Ibid.*

²⁰³ "Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations," ECCC, Case File No: 002/19-09-2007-ECCC-OCIJ, (December 18, 2009), 3.

totally understandable that the court has limited time and resources to accomplish their mission. The extent of the crimes is significant and many decades have passed, eroding the physical evidence and memories of witnesses. It is a challenge to investigate crimes that occurred more than three decades ago, especially sexual crimes. Many victims of GBV were killed and those who survived are fearful of revealing the truth because they do not want to bring shame upon themselves or their family. Thus barriers still exist which prevent the investigation and prosecution of sexual crimes. In Case 002, the cases cited in the Closing Order took about three years to investigate. If we wanted to investigate the crimes in their totality, all of the defendants would pass away before the investigation could conclude. Lars Olsen, Legal Public Affairs Officer, accurately stated, “It is not that people don’t care, but people make a choice about which crimes deserve most to be prosecuted and which crimes represent the total picture of what happened.”²⁰⁴ However, the ECCC still has a responsibility to conduct serious investigations of sexual and gender-based crimes during the DK years²⁰⁵ in order to seek justice for the victims of those crimes, as the court pledged.

C. Written Testimony Contained in the Victim Information Forms

The Victim Information Form (VIF) contains the written testimony of the victim and is critical to the prosecutors’ decision regarding whether the case should be filed with the Co-Investigating Judges for investigation. Indeed, there have been limited resources within both the ECCC and NGOs for assisting victims of sexual and gender-based violence in the filing of their Victims Information Forms. Moreover, the investigators

²⁰⁴ Interview with Lars Olsen, Legal Public Official of ECCC, in August, 29, 2012.

²⁰⁵ Silke Studzinsky, “Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crime before the Extraordinary Chambers in the Courts of Cambodia,” 100.

seem to have little patience for the time required to have these victims comfortably describe the crimes committed against them, a circumstance which can deny the survivors their right to be heard as a persecuted sexual minority. This situation hampers the healing process, which the court promised to provide to such victims.²⁰⁶ During the time I was working for the court, assisting people in filing applications as civil parties or complainants, I was rarely told to focus on written testimony regarding sexual crimes or gender-based violence.

At that time, we were instructed to focus only on physical harm, such as execution, evacuation, starvation, forced labor and so on. It was difficult to include incidents of gender-based violence in the written applications because most of the people filing applications did not write them personally; victims were interviewed by the staff of the Victim's Support Unit of the ECCC or various NGOs, who then recorded their stories. In order to facilitate the interviews, the staff would ask questions to initiate the storytelling. Therefore, the information included on the written form was based on the preferences of the court, i.e. physical and mental harm which the regime inflicted on victims and their families through execution, starvation, forced labor and evacuation. Information related to gender-based violence was rarely revealed because most survivors are very sensitive about that topic. Forced marriage was more likely to be revealed than rape. In some cases, survivors willingly revealed their experiences of sexual violence. In the Women's Hearing, one female civil party revealed the truth about being raped many times during the KR regime, even though that information was not mentioned in her written testimony filed with the court. She told the ADHOC staff only that her husband,

²⁰⁶ Silke Studzinsky, "Neglected Crimes: The Challenge of Raising Sexual and Gender-Based Crime before the Extraordinary Chambers in the Courts of Cambodia," 100.

parents and brother had been killed during the KR regime. In particular, her brother was detained and killed under Duch's supervision at S-21. She did not reveal information about the rape crimes committed against her because she was not asked about any sexual or gender-based violence and she did not feel comfortable talking with male staff about those experiences. "If I had met with female staff, I would have told my entire story for inclusion in the Victim Information Form."²⁰⁷ Who decides which crimes represent a comprehensive picture of what happened during the KR regime? Are sexual and gender-based crimes a part of that picture?

Resource limitations of the court and an unwillingness to prosecute rape and gender-based crimes under the ECCC present obstacles to justice for survivors of those crimes, who have the same rights as other victims to have their stories heard. Moreover, prosecuting gender-based crimes promotes public awareness of the unspoken atrocities that took place during that time. The sexual and gender-based crimes which took place during DK were severe and have had lingering detrimental effects on women and their families, both physically and mentally. The victims have had no opportunity to talk about the crimes or receive support to help cope with what they have experienced.

D. Political Constraints

At the time of writing, the decision to prosecute Cases 003 and 004 remains controversial. The government of Cambodia, especially Prime Minister Hun Sen, opposes prosecuting those cases in order to maintain peace and promote reconciliation in the country. The Prime Minister's position was taken into account by the national prosecutor, Chea Leang, for three main reasons, (1) Cambodian's past instability and the continued

²⁰⁷ Interview with Civil Party Case 001/002, March 31, 2013.

need for national reconciliation; (2) the spirit of the agreement between the United Nations and the Royal Government of Cambodia agreement, and the spirit of the law that established this court (anticipating only a small number of trials); and (3) limited duration and budget of the court.²⁰⁸

Mr. Robert Petit, former international prosecutor, argued that new investigations would benefit the court by providing a more comprehensive historical record of the DK regime. He also asserted that “he does not believe that such further investigations would jeopardize the hard-earned peace and stability currently enjoyed in Cambodia after decades of civil war, bloodshed and unpredictable fluctuations in the political situation.”²⁰⁹

However, the court should remain independent and free from political interference. In 2009, during the lengthy debate between the Cambodian and international prosecutors and investigating judges on whether to proceed with Cases 003 and 004, the Documentation Center of Cambodia conducted a survey to determine whether the Cambodian people preferred limiting the trial to five people or increasing the number of people prosecuted by five or ten. This public opinion data would allow the judges to make a more-informed decision. Among 1,110 respondents, which included base people, new people, and the young generation, 56.8% preferred to prosecute an additional five to ten people and 41.4% preferred to limit the prosecution to five individuals.²¹⁰ The court

²⁰⁸ Terith Chy, “A Thousand Voices: Questions on additional Prosecution Posted by the Co-Prosecutors at the Extraordinary Chambers in the Courts of Cambodia (ECCC), (Phnom Penh: DC-CAM, March 5, 2009), 9, accessed September 14, 2013, http://d.dccam.org/Projects/Tribunal_Response_Team/Victim_Participation/PDF/A_Thousand_Voices--EN.pdf.

²⁰⁹ Ibid

²¹⁰ Ibid., 10

is established for Cambodians, so Cambodians' voices should be taken into consideration. The survey results played a crucial role in supporting the argument of the international prosecutor.

The decision to prosecute Cases 003 and 004 must depend solely upon the ECCC, not the UN or the Prime Minister. Yet, the structure of the ECCC, which consists of a majority of national judges and staff who are political appointees, lends itself to political interference. For years there has been criticism about the independence of the court; however, it continues to function without changes. Many UN staff members, particularly two Co-Investigating Judges, another international prosecutor resigned from their positions due to political interference, which precluded them from carrying out their responsibilities according to their conscience. Today, the International Prosecutor and International Investigating Judge are advocating for the prosecution of Cases 003 and 004.

In 2012, a report on the Panel of the Second Women's Hearing showed that "the serious lack of political will to ensure that post-conflict traditional justice mechanisms meaningfully include and address Sexual and Gender-Based Violence Crimes (SGBVC),The result is, at best, limited and ad-hoc attempts to provide some redress for victims and, at worse, outright refusal to acknowledge SGBVC and treat it as constituting a serious violation of international criminal law as part of conflict and under oppressive regimes."²¹¹ In order for sexual and gender crimes to be heard before the ECCC in Cases 003 and 004, more advocacy would be required from international prosecutors, lawyers,

²¹¹ Theresa de Langis, "Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict," 54.

and civil society. The court should rule independently and without executive interference. If the court continues to be influenced by the government, the court will lose the public's trust and credibility. The successful outcome in Case 001, in which Duch received a life sentence, and the impending judgment in Case 002/001 have bolstered the reputation of the court. However, many people are discouraged by the slow pace of proceedings, especially in light of the advanced ages of the accused in Case 002. People are anxious to have the truth revealed and see justice served before the defendants pass away.

3- ECCC's Contribution

A. Ensuring Civil Party Participation

Unlike ad-hoc courts such as the International Criminal Tribunal for Yugoslavia (ICTY) in The Hague, or the International Criminal Tribunal for Rwanda (ICTR) in Tanzania, Cambodia was unique in that the ECCC was established in the country where the crimes had taken place. The Yugoslavian and Rwandan trials have been criticized for not offering a full form of retributive justice, thereby failing to render justice by not allowing the crime victims to participate in the legal process. The ECCC allows survivors of the Khmer Rouge regime to participate in the court proceedings, marking the first time an international tribunal of its kind has afforded victims direct participation as civil parties in the court. This was the case because Cambodia followed their civil law system, under which victims have the right to seek reparations, have legal representatives, present evidence, cross-examine witnesses, and make closing statements. The civil law system that allows civil parties to participate in the Tribunal is not popular. Victims are usually excluded from the judicial process. In the history of the International Tribunal after World War II, no single tribunal allowed survivors to present their testimony as civil

parties in the proceedings. Moreover, there were very few support systems to encourage survivors to speak out about their past suffering. The voices of victims of the Holocaust began to be heard during the trial of Adolf Eichmann, marking an advancement in testimony by victims of mass atrocity crimes which continues to this day.²¹² A number of national and international human rights organizations fought to ensure the participation of victims in the International Criminal Court (ICC) in the early 1990s.²¹³ The Rome Statute of the ICC, which was adopted in 1998, allowed victims to participate as witnesses, courtroom participants, and beneficiaries of reparations.²¹⁴ By providing victims with the right to participate, the ICC and other international tribunals are helping to restore the dignity of victims, which contributes to their healing and rehabilitation. The most important aspect of their participation is the revelation of evidence and facts of history which may not have been recorded in other written documents.²¹⁵

The rights of victims were inscribed in the Court's Internal Rules, including the right to direct participation in court proceedings, which is very similar to the rights in the ICC's Rome Statute.²¹⁶ Based on the International Rules of the ECCC, in order to qualify as a "victim," the survivor must have suffered a "physical, material or psychological" injury and this injury must be "the direct consequence of the offense, personal, and have actually come into being."²¹⁷ In order to participate as a civil party, survivors of the regime and their relatives must submit a Victim Information Form (VIF), citing their

²¹² Stover et al., "Confronting Duch: Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia," 6.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Stover et al., "Confronting Duch: Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia," 12.

²¹⁶ Ibid.

²¹⁷ Thomas and Chy, "Including Survivors in the Tribunal Process," 233.

physical, material or psychological injury as a consequence of the DK regime, and the locations of those crimes, to the Victim Support Unit (VSU) of the ECCC. A civil party to the criminal proceedings shares many of the same procedural rights as the defense and prosecution. Through their legal representative, civil parties are permitted to ask questions of the defendants, witnesses and experts. Last but not least, the Internal Rules also mention that the primary role of the civil parties is to support the prosecution and to secure collective and moral reparations (ECCC, Internal Rules, Rule 23(1)). Civil parties volunteer to testify before the court at the request of their legal representatives. Due to time constraints and the vast numbers of civil parties, the court cannot hear the testimony of all civil parties. For convenience of the civil parties, they may also provide testimony from abroad via video conference; in that case, the civil party always has a lawyer sitting next to him/her to provide legal advice during their testimony. Civil parties may also request protective measures to keep their identities confidential.

B. Victims Support Section

To ensure an effective victim participation process, the Victims Unit was established in 2008, with the name later being changed to the Victims Support Section (VSS). The VSS has the responsibility to assist victims in filing complaints and civil party applications with the ECCC. It also ensures that all the survivors have legal representation in the courtroom and receive sufficient information regarding their rights.²¹⁸ However, the delayed establishment of the VSS resulted in a lack of human resources and funding to support the timely process of collecting applications, entering them into the database, and forwarding them to the prosecutors' office. Most of the civil

²¹⁸ "ECCC Internal Rules (Rev.8) English," ECCC, accessed June, 2013, <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.

parties, including women, filed their applications through non-governmental organizations, including the Cambodian Human Rights and Development Association (ADHOC), the Documentation Center of Cambodia, (DC-Cam), the Khmer Institute for Democracy (KID), Cambodia Social Development (CSD), the Center for Justice and Reconciliation (CJR), Cambodian Defenders Project, Khmer Kampuchea Krom Human Rights Association (KKHRA), Advocat Sans Frontier (ASF), and ASRIC (Applied Social Research Institute of Cambodia), all of which worked to assist Cambodians living throughout the United States to file their complaints in Case 002. All of these organizations are dedicated to bringing justice and healing to the survivors of the regime and their children. They have assisted victims throughout Case 001 (against Kaing Guek Eav, alias Duch, who was the head of Tuol Sleng Prison) and Case 002. However, the VSS was initiated early in the Case 001 initial hearing and has continued to assist many civil parties in Case 002. VSS has conducted regional civil party forums in various locations throughout the country. With the cooperation of other intermediary organizations, the VSS has been assisting civil parties with legal and psychological support to best serve their interests.

A lot of women have participated in different capacities in the ECCC; some have filed applications as civil parties, and others as complainants and witnesses. The role of complainants and witnesses differs from that of civil parties. In Case 001, civil parties were represented by various legal NGOs who assisted them in filing their applications. There were four groups of civil party legal representatives from Intermediary Organizations: Civil Party Group 1 represented by DC-Cam, Group 2 represented by CDP, Group 3 represented by ASF, and Group 4 represented by ADHOC. The court did

not have funding to support the civil party lawyers; thus, many of those who worked during Duch's trial were volunteers.

Complainants in the proceedings provide information in written form to assist the prosecutors with the case. Witnesses volunteer to provide oral testimony about crimes they suffered or witnessed; however, they are not entitled to direct participation in the proceedings or reparations.

In Case 001, 93 survivors have been recognized as civil parties, of which 55 are women. Only one defendant was charged by the Co-Investigating Judges in Case 001—Kaing Guek Eav (alias Duch), the former head of S-21 (Tuol Sleng Prison) in Phnom Penh, where an estimated 14,000 prisoners considered enemies of *Angkar* (DK) were tortured and executed. Despite the fact that there were at least 196 prisons²¹⁹ in operation during the DK period, Duch was the only person indicted by the Co-Investigating Judges. He is 69 years-old, the youngest among all the defendants in Cases 001 and 002. His trial began on 17 February 2009 and concluded on 3 February 2012, when the Supreme Court sentenced him to life imprisonment. Throughout the duration of the trial, more than 31,000 people visited the court to follow the proceedings.²²⁰ International funding and diligent efforts on the part of NGO's have allowed the court to conduct extensive outreach efforts. In comparison with other international courts, the ECCC is regarded as

²¹⁹ "Mapping Project," DCCAM, accessed June 9, 2013, <http://www.d.dccam.org/Projects/Maps/Mapping.htm>.

²²⁰ The Supreme Court Chamber found Kaing Guek Eav guilty in compliance with Articles 5, 6 and 29 (new) of the ECCC Law of Crimes committed in Phnom Penh and inside Cambodian land between 17 April 1975-1979: "(1) crimes against humanity such as: persecution on political grounds, extermination (encompassing murder), enslavement, torture and other inhumane acts; (2) Grave breach of the Geneva Convention of 1949 (known as War Crimes) such as: willful killing, torture and inhumane treatment, willfully causing great suffering or serious injury to body or health, willfully depriving a prisoner of war or civilian of the rights of fair and regular trial and unlawful confinement of a civilian." "Kaing Guek Eav: Biography" ECCC, accessed January 16, 2013, <http://www.eccc.gov.kh/en/indicted-person/kaing-guek-eav>.

the first court to have significant numbers of people participate in the proceedings. Since the announcement of opening statements at the ECCC on November 21, 2011, 67,705 persons have attended the trial: 9,234 in 2011 and 58,471 in 2012.²²¹

This attendance figure indicates that the court has been successful in engaging the public to follow and understand the proceedings.

Case 002 has four defendants; however, one of them, Ieng Thirith,²²² the former Minister of Social Affairs, has been deemed unfit to stand trial due to a diagnosis of dementia. She was removed from the trial on September 16, 2012.²²³ The three remaining defendants include Ieng Sary, Khiev Samphan, and Nuon Chea. Unfortunately, Ieng Sary died of ill health before Case 002 could be concluded. Three thousand eight hundred fifty persons were granted the right to participate in the case. Women accounted for sixty-one percent of the total applicants in these two cases.²²⁴

The Victims Support Section of the ECCC partnered with the Cambodian Defenders Project (CDP) and Transcultural Psychosocial Organization (TPO) to provide opportunities for women to break their silence regarding the sexual crimes they experienced during the DK regime. Moreover, their work has also promoted public awareness of these atrocities, which were not well-reported until this time. Sexual and gender-based crimes committed during the regime proved harmful to women and their families, both physically and mentally. Those women have had no opportunity to express

²²¹ “Statistics for case 0002/1” ECCC, accessed January 10, 2013, <http://www.eccc.gov.kh/en/articles/statistics-case-0021>.

²²² Ieng Thirith, Ieng Sary’s wife, originally named, Khiev Thirith, sister of Khiev Ponnary, Pol Pol’s wife.

²²³ “Ieng Thirith: Biography,” ECCC, accessed January 16, 2013, <http://www.eccc.gov.kh/en/indicted-person/ieng-thirith>.

²²⁴ Sa Couto, “Victim Participation at The International Criminal Court and The Extraordinary Chambers in the Courts of Cambodia: A Feminist Project?,” 330.

their suffering or receive support to help them in coping with their traumatic experiences. They hope to receive justice from the ECCC.

C. Truth Telling Mechanism

Retributive justice, on which the Khmer Rouge Tribunal is currently ruling, is not considered to be the only mechanism that can heal and bring closure to survivors of the DK regime. Restorative justice, which focuses on healing and truth telling, is another mechanism for bringing closure to victims of mass violence, especially rape and gender-based violence (GBVC). This non-judicial mechanism has been practiced in many post-conflict countries such as South Africa, Rwanda, East Timor, and Sierra Leone. Why is it important to utilize a non-judicial mechanism or truth telling for survivors of sexual and gender-based crimes?

In 2004 Tang Kim, a victim of rape, decided to break the silence regarding sexual crimes under the DK regime through production of a film called *The Khmer Rouge Rice Fields: the Story of Rape Survivor Tang Kim*. She revealed the suffering which had remained locked in her heart for many years, but she did not agree to talk publicly about the film after it was made, stating, “I think it is better if I don’t reveal my story. That way, people will not know who I am, and I will feel more at peace.”²²⁵ She found it difficult to endure the pain of recalling her experience, which she calmly described to the film producer before a camera. The film not only helped her release deep-seated emotions by sharing her story of suffering, but also precluded her from having to repeatedly tell her story in public, especially since Cambodians consider sexual abuse to be a taboo subject.

²²⁵ Kristina Anderson, “Turning Reconciliation on Its Head: Responding to Sexual Violence Under the Khmer Rouge,” *Seattle Journal for Social Justice*: 3(2012): 820, accessed September 12, 2013, <http://digitalcommons.law.seattleu.edu/sjsj/vol3/iss2/30>.

In her article *Turning Reconciliation on its Head*, Kristina Anderson described DC-Cam's documentary film about Tang Kim's life as a new model approach to encourage reconciliation for victims of sexual violence, especially in patriarchal societies.²²⁶ Tang Kim continues to live in Kampong Chhnang Province, but her life is still lonely. She has never shared the rape story with her husband and children. During the 1980s, her second husband learned about the rape and the revelation ultimately led to divorce. She struggled to raise three children alone. She had to endure extreme emotional hardship and persevere with her life. She felt that her situation might be a result of her bad Karma, so she is committed to struggle until she has redeemed herself. Unfortunately, Tang Kim lives within a traditional and patriarchal society which values a woman based solely on her virginity. She should have received strong support from her husband considering her traumatic experiences during the DK regime, yet he reacted by abandoning her and his responsibility for their three children.²²⁷

Her health has deteriorated due to the trauma of her experiences during the regime and her stressful life. She becomes fearful when she hears lightning and thunder during the rainy season or any explosive sound such as fireworks. She stated, "I feel very frightened when I hear loud sounds, so I do not want to attend ceremonies in which fireworks are used. When she hears the sound of fireworks, her chest trembles and she

²²⁶ Kristina Anderson, "Turning Reconciliation on Its Head: Responding to Sexual Violence Under the Khmer Rouge," *Seattle Journal for Social Justice*: 3(2012): 819, accessed September 12, 2013, <http://digitalcommons.law.seattleu.edu/sjsj/vol3/iss2/30>.

²²⁷ Socheat Ngean, "Tang Kim: The Karma of life and want to witness justice," *Searching for the Truth Magazine*, 152 (December, 2012), 25.

hides under a table.”²²⁸ She is seriously traumatized by her experiences during DK and by the crimes perpetrated on her by the KR.

Tang Kim was the wife of a former Lon Nol soldier and was targeted to be executed immediately after the KR took over the country in 1975. She and eight other wives of Lon Nol soldiers were taken to be killed after their husbands had already been executed. Kim and the other eight women were raped before the executions were carried out. Among the eight women, Kim was the only one who managed to survive when one kind KR soldier encouraged her to escape before she was killed. She hid in water for three days without any food to eat. The KR soldiers were searching for her, even in the pond in which she was hiding and she was almost caught. She lived in fear during the entire DK period. In 2003, she entered the nun hood and began living in a pagoda, which was a peaceful place for her to release her Karma, and she remained there until 2006. Tang Kim traveled from her province to attend the court hearings in Phnom Penh. “I always get sick for four or five days after I return. I have no one to look after me, but the only thing I want is to witness justice.”²²⁹ However, as I mentioned above in Section A, the crime of rape is excluded from the investigation because rape is not considered one of the crimes used by the CPK leaders to implement the common purpose. Therefore, Tang Kim’s fervent hope to receive retributive justice from the ECCC will never be realized. As a victim of rape, she might be even more hopeless and upset if she knew that the rape case will never be investigated or prosecuted.

²²⁸ Ibid., 24.

²²⁹ Socheat Ngean, “Tang Kim: The Karma of life and want to witness justice,” *Searching for the Truth Magazine*, 152 (December, 2012): 25.

Since rape and other sexual crimes are scarcely being heard before the ECCC and the victims of such crimes are thus prevented from having their voices heard and their suffering acknowledged, a non-judicial mechanism called the Women's Hearing was established in 2011. This hearing is based on the concept of truth telling, which was used in many post-conflict countries, including the *gacaca* court in Rwanda. It is not a court to determine guilt or innocence, but is structured for women to narrate their personal stories. This process localizes the global concept of restorative justice, merging it with the strict and conservative Cambodian culture which traditionally keeps silent about rape and gender-based violence. Through mediators such as NGOs, it is hoped that the process of confession and truth telling will ultimately help protect women's rights and end the culture of impunity regarding sexual crimes. The goals of the project are to generate dialogue which will improve the attitude of society toward victims of rape and GBV so that such issues can be dealt with objectively.

Why is restorative justice important for victims of gender-based violence?

As evidenced by the description of Tang Kim's life and health condition, we know clearly that past experiences of rape and GBV often continue to haunt victims. Victims of sexual crimes and GBV usually have a high level of trauma; feelings of shame, isolation, helplessness and confusion; frequent headaches, chest pain, nightmares, insomnia and depression; a bad temper; and excessive drinking. Victims live in fear that one day stories of their experiences during DK might be revealed and have a detrimental effect on their safety or the status of their family within the community. These victims really need the public to understand and acknowledge their suffering, and offer psychological support to help them cope with their emotions.

The western concept of truth telling was created to break the silence of sexual and gender-based crimes which were committed during the KR. It is an alternative way for Cambodian people to reveal their sexual abuse publicly. However, by testifying in the Women's Hearing, victims of sexual crimes have also become empowered to share their experiences and thereby to gradually heal their wounds.²³⁰

Retributive and restorative justice differ in that the former focuses on identifying the wrongdoers and punishing them through legal proceedings, while the latter emphasizes restoring the victims through healing, reconciliation and reintegration into society. It is difficult for victims of rape and GBV to testify in trial proceedings, which require legal proof, cross-examination and legal confirmation that the victims were truly abused. Because the court is not able to present physical evidence, due to the fact that the crimes occurred more than thirty years ago, lengthy testimony would be required to prove the nature of the crimes. As Tang Kim stated, she is reluctant to repeatedly relate her story because doing so causes her excessive emotional suffering.

Cambodian female civil parties who have testified before the Women's Hearing have found the process empowering and beneficial as they confront their fear and shame. They are allowed to narrate their story without time limitations and without the pressure of legal procedure which would require them to respond to questions from judges and

²³⁰ The program was initiated by the Cambodian Defenders Project in collaboration with the Victims Support Section of the ECCC and TPO. The hearing aimed to raise awareness of past violence and also brought attention to the long-term trauma survivors of these crimes have endured. Ten women from Cambodia, Bangladesh, Timor-Leste and Nepal, ages 23 to 80, participated in the hearing to share their experiences of sexual and gender-based violence during times of war and conflict within their countries. The hearing was open to the public and hosted the ASEAN Secretary General, representatives from the Royal Government of Cambodia, members of the ECCC, civil parties to the ECCC, UN senior officials and staff, representatives of international and local NGOs, and university faculty and students. (Theresa de Langis, "Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict," 5.)

lawyers. They are able to describe their experiences in their own simple words and with a therapist standing next to them should they require emotional support. During testimony of Hong Savath, a 47-year-old female civil party, she related her experiences during the Khmer Rouge regime, in which she witnessed forced evacuations, forced marriages, executions, and was gang-raped. Savath mentioned that she was not able to recount her story as well as she had expected because it was difficult for her to control her emotions. Nevertheless, she was proud of herself and felt empowered just by having so many people in the room listening to her story. As they expressed their sympathy, she noticed that most of the participants were crying. Regardless of whether they were Cambodians, foreigners, students, or staff members of NGOs, they cried out loud while listening to her story about life during the DK regime. It was very difficult for her to recall her memories and share them in the hearing. She wept and felt very sad, but the hearing really helped her and other survivors of rape and gender based-violence to express their suffering and pain, which had been locked inside their hearts for so long. By sharing her story, she experienced a release of emotion and was able to talk comfortably.²³¹

The Women's Hearing is not only helping civil parties of the ECCC to heal their wounds through their testimonies, but is also ensuring that victims throughout the Asia-Pacific region have their voices heard locally, regionally and internationally. They are no longer suffering alone, but breaking their silence along with victims of similar crimes in order to seek justice and recognition from society. They have shown true bravery in revealing their experiences of past suffering in the face of injustice. A civil party in Cases 001/002 commented during the interview that she was very happy but also felt sick

²³¹ Interview with Hong Savath, March 30, 2013.

during the first Women's Hearing when she revealed the truth about how she was repeatedly raped. After participating in the Women's Hearing, she also felt that she might be discriminated against and marginalized, and thus asked herself, "Why did I reveal this suffering today? I have kept it a secret for more than thirty years. Why not just hide the truth until I die?"²³² She decided to speak out because she wants the younger generation to be aware of the real history of the KR regime, which was very cruel. She urged them to join with her to stop all kinds of violence against women. She felt more empowered after she was invited to join the second Women's Hearing, which was attended by many women who suffered similar sexual abuse during wars and conflicts throughout the Asia-Pacific region. She said, "There are many women who have also been brave in revealing their stories, so I am not alone in revealing the truth. There are many young women who suffered similar experiences. They suffered more than me because they were so young and innocent."²³³

Her health is improving, but she continues to take medication provided by TPO. Through her participation in the ECCC proceedings, she has learned about legal procedures. She has also become acquainted with a lot of good people who work with the Victims Support Unit and TPO. In addition, other female civil parties take good care of her. She feels her life has become more meaningful as a result of the care, respect and support shown to her by the ECCC and staff of the NGOs. She said, "Without the ECCC and Women's Hearing, I would be living in a dark cave and never see the sunlight."²³⁴ Previously, she did not want to associate with anybody. She just hid and endured her

²³² Interview with CP Case 001/002, March 30, 2013.

²³³ Interview with CP case 001/002, March 30, 2013.

²³⁴ Ibid.

sadness alone, suffering from insomnia, which caused her to fall ill frequently. She compared her story to a boil that must be lanced. If the boil isn't broken, it will hurt continually; but if it is lanced, it will gradually heal. She said, "Now, I am really healed and enjoying my life with my grandchildren, following the trial proceedings on the radio and television, and participating directly when I am invited."²³⁵

Duong Savorn, who organized the Women's Hearings, mentioned that through his observation and the report findings from TOP, he felt the hearings had a great deal of positive impact on victims of rape and GBV. He observed minimal negative impact. The family members, who had been unaware of the stories, offered support and understanding to the victims. However, after the stories were revealed, there were rumors and discussion about the cases within the community, which is inevitable. Nevertheless, most community members were empathetic and offered sympathy and encouragement to the survivors.²³⁶

Another female civil party in Cases 001/002, who attended the Women's Hearing, observed that the women who were sexually abused during the KR regime and in conflicts in other Asia-Pacific countries are still severely traumatized and suffering in their hearts. "I am a woman myself; I really admire them because they bravely spoke the truth about experiences which all females find difficult to share. I pitied them very much. I did not criticize them, but empathized with them instead and really shared their feelings of suffering and pain." After listening to testimony at the hearing, she felt that women from some other countries had worse experiences during the conflicts and wars in their

²³⁵ Interview with Civil Party case 001/002, March 30, 2013.

²³⁶ Phone Interview Duong Sivorn, Women's Hearing Organizer, Cambodia Defenders Project, July 26, 2013.

countries. She does not want anybody committing such crimes against women in Cambodia or anywhere else in the world. She feels Cambodia has a serious sexual abuse problem right now. For example, a father has abused his own daughter and a grandfather committed crimes against his granddaughter, actions which never would have happened in Cambodian society in the past.

The hearing raised issues about sexual violence against women in Cambodia and the Asia-Pacific region. Al Jazeera reported in a recent survey that five percent of Cambodian men admitted that they have joined in a gang rape, which is one of the highest rates in the Asia-Pacific region. Victims, as well as their families, are devastated by such crimes perpetrated on young women in Cambodia. Cambodian society is definitely experiencing crimes of sexual abuse. A UN report states that one in four men across Asia and the Pacific admits to having committed rape.²³⁷ The Cambodian legal system is not only infamous for biased rulings in criminal cases, but also fails to deter rape and other gender-based crimes. An NGO reported that incidents of rape are increasing dramatically every year, yet the prosecution and conviction of rape is quite low. Last year less than twenty gang-rape cases were prosecuted in Cambodia.²³⁸

The female civil party urged the government and local civic organizations to collaborate in educating men to respect females and also to strengthen existing laws to ensure that penalties are commensurate with the devastating impact of these crimes on girls, women, their families, and society-at-large. Most importantly, this issue needs to be

²³⁷ "Researchers Delve into Cambodian Gang Rapes," accessed March 30, 2013, <http://www.aljazeera.com/video/asia/2013/03/2013371211513784.html>.

²³⁸ "Sexual Violence Blights Cambodia," accessed March 30, 2013, <http://www.aljazeera.com/news/asia-pacific/2013/03/201337232128280310.html>.

included in the school curriculum.²³⁹ In order to bring positive peace to the country, sexual and gender-based violence against women must be stopped.

Female civil parties who are survivors and witnesses of gender-based violence have a safe place inside the courtroom in which to share their stories. They are extremely brave to break the silence of these crimes. Their testimonies prompted lawmakers and political figures to take sexual crimes and gender-based violence into account. The hearing is a platform for women to shift the social stigma, which they have been enduring as victims, to governments and perpetrators, who are tasked with ending the impunity for such crimes. The hearing sends a strong message to the perpetrators that women's voices will be heard and that the international community will use their resources to prosecute these crimes to the fullest extent of the law.²⁴⁰

Institutions such as the ECCC and the Women's Hearing have enabled Cambodian women to experience first-hand the global concepts of gender and human rights. Through the ECCC and intermediary organizations, the powerful voices of women crying out for justice have caught the attention of people from all walks of life, inspiring them to seriously consider solutions for the prevention of sexual and gender-based crimes, whether in times of war or peace. Ending the impunity for sexual and gender-based crimes not only acknowledges the suffering of survivors and victims of Khmer Rouge crimes, but also will help to prevent SGBV in the present and future as well. It alleviates the social stigma encountered by victims of GBV, breaking the silence of the crimes and encouraging dialogue. By burying the crimes in silence, the perpetrators are

²³⁹ Interview with Chum Neou, CP 001/002, March, 30, 2013.

²⁴⁰ Theresa de Langis, "Asia-Pacific Regional Women's Hearing on Gender-Based Violence in Conflict," 8.

not paying for their actions. The contributions of these brave women create a foundation for building sustainable peace in which the public, as well as decision makers, can fully understand the problems and work together to enforce laws and programs to promote gender rights. The author suggests that the scope of the Women's Hearing should be expanded beyond sexual and GBV crimes as a truth telling commission for civil parties and for the public. It is essential for the historical record and to heal the survivors of the regime, most of whom have not been able to testify about the suffering in court due to the large number of civil parties participating in Case 002. The next chapter will address the testimonies and impact of the ECCC on the lives of female victims of the Khmer Rouge.

IV. Chapter 4: Civil Party Testimonies and the Impact of the ECCC

1. Facing the Unknown

For most civil parties who appeared before the ECCC, the prospect of testifying was filled with foreboding. Most were peasants from various provinces, with diverse backgrounds and social status, who had never before been in the capital city of Phnom Penh. One civil party recalled the first time she traveled the long distance from Kampong Thom Province to Phnom Penh in an effort to find the Documentation Center of Cambodia, where she would be able to receive assistance in filing her application against Kaing Guek Eav (alias Duch). “I didn’t know where Phnom Penh was. When I think back to that occasion, I feel I was very brave. I was willing to undertake such a journey because of my commitment to find truth and justice for my father.”²⁴¹ Cambodians who lived through the Khmer Rouge regime rarely knew the names of the leaders because those in charge led the country anonymously, using only the collective name *Angkar*, (“organization”), which referred to the Communist Party of Kampuchea.²⁴² Those leaders included Khieu Samphan and Nuon Chea, both of whom are currently on trial in Case 002 at the ECCC. Their identities only became known after the Khmer Rouge was overthrown by the Vietnamese in early 1979. Survivors felt intimidated by the prospect of providing evidence against the accused former leaders, who were known to be intellectuals. For these women survivors to have actively attended the court proceedings marks one of the bravest moments in the history of Cambodia. In a quest for justice, they filed their applications, sat inside the court room, and testified against the accused. They

²⁴¹ Interview with Hav Sophea, August 12, 2012.

²⁴² Duch explained the word *Angkar* he referred to his superior Son Sen as *Angkar*, and his boss Son Sen referred to Pol Pot as *Angkar*.

were acutely aware of their unfamiliarity with the court in general, its legal proceedings, and the scope of the investigation. Moreover, they knew that testifying about the hardships and suffering they endured at the hands of the Khmer Rouge would cause them extreme emotional trauma. For instance, Ouk Sopalei was certain that attending the proceedings would be very stressful for her because she would be forced to recall all the trauma of her past. However, she felt compelled to do so on behalf of her loved ones, who were relying on her to find justice for them and for society as a whole. The women also feared that they might experience an emotional break down during their testimony at the hearing. Some survivors told the author that they had prepared their written testimony months in advance so that they could just read it out loud to avoid making unintentional mistakes. Some female civil parties were afraid that their extreme anxiety would cause them to speak incorrectly and thus negatively affect their status and standing when they returned to their respective communities.

So how and why did they come to the court? Most civil parties had heard about the ECCC either directly from DC-CAM (Documentation Center of Cambodia), human rights NGOs such as ADHOC, the Center for Social Development (CSD), other NGOs, or radio and television advertising. Some, like Ouk Sopalei, felt drawn to the ECCC by “the magnetic power of the Court.”²⁴³ They felt optimistic that a court based on international standards and established with the support of the UN would guarantee truth and justice for them, their loved ones, and indeed all Cambodians. They felt it was their moral duty as survivors to participate and reveal to the world and the next generation what had happened during the Khmer Rouge regime.

²⁴³ Interview with Ouk Sopalei, Civil Party Case 002, August 22, 2012.

2. Personal Motivation

All participants wanted to learn the truth about relatives whose fates were uncertain, to find out how their loved ones had died, and to obtain justice on their behalf. They wanted to restore the dignity of those who had been lost to KR atrocities. Some survivors had been waiting for thirty years to meet the perpetrators of the violence face-to-face, speak truth to the accused, and rid themselves of the burden of sorrows that had been weighing them down for so many years. They felt that participating in the judicial proceedings and confronting the legacy of violence would reduce their symptoms of trauma and debilitation. By engaging with the court, they hoped to regain the capacity for action that the original abuse had sapped. Those who lost close relatives wished that they themselves could be recognized as the real victims. Resorting to the court enabled them to transfer responsibility for inflicting punishment on the perpetrators of the violence from the victims' families to a legal institution. Finally, some civil parties also wished to claim reparations for all they had lost.

3. Testimonies

Certain common themes emerged from the testimonies of the civil parties, including the trauma of separation from their family members, the negation of traditional familial roles, their feelings of helplessness and remorse at not being able to help family members or relatives during the dark days of the KR, the loss of freedom, starvation, the lack of medical care, the feeling of dehumanization, the loss of family members, unlawful torture and execution, the loss of property and means of support and emotional trauma and inability to live normal lives in the aftermath of the regime.

A. Separation from Family Members

The civil parties testified that husbands, wives, and children were separated and assigned to work in separate camps. Children were placed in children's camps based on their ages. If they were big enough, they would be assigned to the Children's Unit. Their main task was not studying or playing, but collecting manure and cutting leaves to make compost for the rice fields, carrying rice seedlings for farmers during the transplantation, and various other jobs. Babies lived in a day care setting, tended by elderly people so that their mothers could work in the fields. However, the children were not treated well due to the high ratio of young children to just one or two adults. If the mothers did not go to their assigned work, they would be deprived of food. Women found it difficult to endure the mistreatment of their children by other local children, the local people and the Khmer Rouge. They were heartbroken to know that their children were scared or had become ill and yet were not being cared for properly. For instance, civil party Denise Affonço testified about the mistreatment of her son.

"I no longer saw my son, and the same thing happened to my sister-in-law...My son himself was badly treated. He was traumatized. [Today,] he can't even talk about that time. ... Once I found his body covered with the marks of having been beaten ... because like all children his age, he once went to find wood in the forest. He picked up a piece of wood that had been cut by somebody else. The *chhlop* [local militiamen] caught him and said he had to be punished. He was taken to a field and forced to dig [the earth] all day ... [At the end of the day,] he had marks all over his body, but he didn't want to tell me what they did to him."²⁴⁴

B. Loss of Traditional Family Roles

²⁴⁴ "Vivid Civil Party Testimony: How Khmer Rouge Promises of "Paradise" Resulted in Hell," *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/vivid-civil-party-testimony-how-khmer-rouge-promises-%E2%80%9Cparadise%E2%80%9D-resulted-%E2%80%9Chell%E2%80%9D>.

Many women could not fulfill their traditional roles as mother, wife, daughter, and relative. Civil party Im Sunty testified that the most difficult moment in her life was when her father became seriously ill and she was unable to tend to him or procure medicine for him. She even questioned the village chief about why he was not given medication. Another civil party, Thouch Phandara Sar, who testified on May 29, 2013, blamed herself when her son fell ill and died right before her eyes. “My son, before he died he smiled at me and asked me to smile back at him. How would you feel, Mr. President? It was so painful for me as a mother to see him dying in front of me and not to have any medicine to give him.”²⁴⁵ She also suffered because she could not help her father or save him from the hard labor that he was forced to do by the Khmer Rouge in her village. She emphasized that parents are to be compared to gods; we must not do anything to harm them and must take care of them in their old age.

Civil party Chan Socheat, a farmer and official of Pursat Province, was similarly distressed when she was harshly rebuked and not allowed to leave the Women’s Unit to visit her mother, who had fallen ill in the village: “You, *mit!* (Comrade!) Are you a doctor? If you go to see your mother, will she recover?”²⁴⁶ Her father suffered extreme anguish because he was unable to do anything to help his sick children, who died one by one in his presence, and he himself did not survive the regime.

C. Helplessness and Remorse

Civil party survivors expressed remorse as they described their helplessness at not being able to assist their loved ones or persons in their care. One civil party (in Case

²⁴⁵ “Evidentiary Hearing in Case 002/ May 2, 2013- Part 1,” *Youtube*, accessed June 12, 2013, http://www.youtube.com/watch?v=ke0s_DAmaso.

²⁴⁶ *Ibid.*

002), who happened to be a medical staff person, told the judges that he will never forget the suffering that civilians endured before and after the Khmer Rouge took over Phnom Penh. The images of patients being evacuated from hospitals have stayed in his mind and he is haunted by the memory of a little girl who was seriously injured and who begged him to help her.

“I was helpless. I was obliged to help her as a doctor, but I couldn’t help her, it was beyond what I could do at that time... Frankly speaking, I felt uncomfortable leaving the patients behind.... But, the thing was, how could I assist them in my capacity? I couldn’t help them much. I felt uneasy when I left, because I left the patients behind, in particular the young girl, and I am still haunted by her image.”²⁴⁷

Another Civil Party, Ting Sokha, who lost her daughter to illness, blamed herself for not saving family members—a sacred duty for Cambodian women.

“I was so angry with myself because I didn’t have the ability to save my family members. I became hopeless. Previously, I told myself that I must try to look after my family members, my children, and myself, but in the end, my children died—in my arms, before my eyes. I even begged my husband to kill me. I did not want to live in such a terrible situation.”²⁴⁸

D. Loss of Basic Freedoms

One civil party told the court that her existence in Cambodia during the KR regime was like living in hell or in a prison without walls. Cambodians were deprived of all basic human rights: the right to talk, express their thoughts, express feelings and affection, move, marry, provide shelter, expect equal treatment, and even to survive.

²⁴⁷ “Two Civil Parties Testify Dire Conditions Surrounding Evacuation Phnom Penh,” Cambodia Tribunal Monitor, accessed March 06, 2013. <http://www.cambodiatribunal.org/blog/2012/11/two-civil-parties-testify-dire-conditions-surrounding-evacuation-phnom-penh>.

²⁴⁸ “Civil Party: ‘We were living in a prison without walls’,” *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

People lived in dehumanizing circumstances, oppressed, without hope, and fearful of death. Ms. Affonço's answer to the prosecutor when he asked whether she had exercised any individual freedoms during the period from April 17, 1975 to January 7, 1979, is illustrative:

"I stated that I was in an open prison, but in fact we were their prisoners, because everywhere we went, we were weeded out; we were recorded and registered; we were ordered not to leave. Every time we were ordered to leave ... we were ordered to be watched. There was always somebody behind you, surveying your work. It was an open prison because we were being deprived of freedom. We were being spied upon. The *chhlop* [local militiamen] were always there. They were monitoring the children. ... We did not have the right to leave the village...."²⁴⁹

Civil party Chan Socheat, who was very resourceful, corroborated Ms. Affonço's story about the prohibition on movement. During the DK regime, a letter was required from the village chief if anyone moved from village to village. Ms. Socheat, who lost all of her extended family to starvation, survived by falsifying a village chief's letter many times and moving from place to place in search of food.

E. Starvation

Civil party Chan Socheat described the daily diet as a watery soup mixed with morning glory and unappetizing rice. She can still hear her two siblings commenting before going to sleep, "If only I could have rice with salt to eat!" Her siblings became weaker and weaker and eventually died from starvation, and all fourteen members of her

²⁴⁹ "Vivid Civil Party Testimony: How Khmer Rouge Promises of 'Paradise' Resulted in Hell'," *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/vivid-civil-party-testimony-how-khmer-rouge-promises-%E2%80%9Cparadise%E2%80%9D-resulted-%E2%80%9Chell%E2%80%9D>.

family suffered the same fate. They all died of starvation. Civil party Ting Sokha spoke about her group being abandoned in the forest with little food and no water. Her family members from Phnom Penh died of starvation, one after the other. Civil party Denise Affonço described how she lost several family members in rapid succession:

“During that period, I lost my sister-in-law. After that, I lost my daughter, who died of hunger. On the morning of her death, the only thing she said was, “Mummy, I want a bowl of rice,” but there were no bowls of rice that day. That day, my niece also died. I had to bury those two bodies myself. A week later, my elder niece also died. She died of sheer weakness. She was no longer menstruating and she died. A third niece also died a week later. The last small nephew died when he was slaughtered by the Khmer Rouge because he stole food from Madam Thean, the wife of the village chief.”²⁵⁰

Expert research has shown that approximately half (more than 800,000) deaths during the DK regime were not violent; they were the result of insufficient living conditions, overwork, starvation and disease.²⁵¹

F. Lack of Medical Care

Lack of medical care was a common theme in the testimonies.²⁵² One civil party’s father died due to a lack of care and medicine. Ting Sokha testified that when her daughter, who was already suffering from malnutrition, had a serious attack of diarrhea,

²⁵⁰ “Vivid Civil Party Testimony: How Khmer Rouge Promises of “Paradise” Resulted in Hell’,” *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/vivid-civil-party-testimony-how-khmer-rouge-promises-%E2%80%9Cparadise%E2%80%9D-resulted-%E2%80%9Chell%E2%80%9D>.

²⁵¹ “Voice of Genocide Survivors,” DC-Cam, accessed July 18, 2013, http://www.dccam.org/Projects/Radio/Episode_1.htm.

²⁵² “Evidentiary Hearing in Case 002/ May 2, 2013- Part 1,” Youtube, accessed June 12, 2013, http://www.youtube.com/watch?v=ke0s_DAmaso.

she was injected with watery medicine taken from a Pepsi bottle by a young child, the so-called “KR doctor.” Her daughter died two days after the injection. Ms. Bay Sophany, 67 years-old, a sister-in-law of Lon Nol’s wife, flew from San Jose, California, to testify before the court on June 4, 2013 about the loss of her three children due to lack of medication and ill treatment by the Khmer Rouge during the DK.²⁵³ She was forced to evacuate along with other Phnom Penh residents. She and her small children left without her husband because he had been sent to the U.S. for training. When her baby daughter developed a fever and diarrhea, she exchanged her diamond wedding ring for rice and then traded the rice for aspirin from the local people to try to save her baby. Finally, the locals directed her to the Khmer Rouge Health Care Center. She put her hands together in prayer, begging the KR to help her daughter because she had done all she could. She gave her beloved daughter to the KR doctor for examination, and suddenly the KR militiaman injected her six-month-old baby in the head. As soon as he finished with the injection, her baby passed away. She sobbed uncontrollably. It was the first time in her life that she experienced such a devastating loss. Later her son died during the night of edema and starvation, and she did not realize what happened until the morning. The suffering she endured intensified when her five-year-old daughter also died of diarrhea. She did not have anything to exchange for medicine to cure her. She was a very adorable and talkative daughter. Srey Pin talked to her mother until the last moment of her life. “Mom, please take me to see the doctor. Mom, please find medicine for me. I want to live with you. After that she continued, “Mom, I will not live, I will die. When will Daddy return from the U.S.? Why has he been there so long? Mom, you must find Daddy.” Then her

²⁵³ Transcript of Trial Proceeding-Case 002 No 002/19-09-2007/ECCC/TC, June 04, 2013, Trial Day 187, 11.

daughter fought for her last breath and died.²⁵⁴ While listening to his wife describe how she suffered, losing her three beloved children and being overworked during the DK regime, her husband, who was sitting in the front row of the public gallery, could not contain his tears. He was in the United States at that time and was unaware of the extreme suffering of his wife as she witnessed the deaths of their three children, one by one. The audience, both in the courtroom and in the public gallery, wept and the old ladies sitting in the front row wiped their tears with their *kramas* (scarves). For them, listening to Sophany's heartbreaking story reminded them of their own similar experiences during the DK regime.

G. Dehumanizing Conditions

Many civil parties recounted their experiences of being treated like animals. Though Phandara Sar described how her father was forced to pull a plow in the rice fields like a draft animal. The KR treated the “new” people, who were former city residents, as if they were lower than animals and only entitled to eat watery soup, whereas the KR cadres ate meat and rice.

Civil party Ting Sokha had this to say: “Our physical appearance was like that of a dead body. We did not have any strength to speak. It seemed like we were living in a prison without walls, which was worse than the animals living in the animal sanctuary on Tamao Mountain. It was barbarous. In 1976, I lost my daughter, my father-in-law, my two in-laws, and my husband committed suicide. My son lost his voice. He became mute.”²⁵⁵

²⁵⁴ Transcript of Trial Proceeding-Case 002 No 002/19-09-2007/ECCC/TC, June 04, 2013, Trial Day 187, 15.

²⁵⁵ “Civil Party: ‘We were living in a prison without walls’,” *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

This barbaric behavior also extended to the KR's treatment of the dead and bereaved. In Cambodian culture, observance of the proper Buddhist rituals for the deceased is obligatory, because the rituals release the soul, enabling it to transit smoothly into the next life. Otherwise the soul wanders around lost in this world. Thus it is very important for Cambodians to know where their family members are buried. Civil parties Thouch Phandara Sar and Chan Socheat had no idea where their fathers and mothers were buried and they regret that fact to this day. When Ting Sokha's daughter died, the KR collected her body and put it in a hammock along with eight or nine other bodies. They would not let Ting Sokha see the place where her daughter was buried. She said, "My daughter died and I had no right even to see her face for the last time, and no right to know where she would be buried! I was forced to go back to work since I had been away for a couple of days!"²⁵⁶ In Ms. Sokha's case, it turned out that the reason the KR did not allow family members to witness the burial of their deceased loved ones was because they stripped the dead of their clothing and buried them naked, throwing them into a mass burial pit. This was a double blow to the mother and further proof that the KR did not consider "new" people to be human.

H. Loss of Family Members

Starvation, forced labor, lack of medical attention, inhumane treatment, and arbitrary executions left many civil parties bereft of their loved ones. Thouch Phandra Sar

²⁵⁶ Interview with Ting Sokha, August, 2012.

lost her father and son to illness, starvation, and forced labor. Another civil party lost her sister-in-law, her daughter, two nieces and a nephew to hunger, weakness, and execution by the KR for stealing food. Fourteen members of Chan Socheat's family died of starvation and possibly heartbreak. Ting Sokha lost her daughter to diarrhea and medical malpractice. Civil party Bay Sophany lost all of her relatives and her husband's relatives because they were close relatives of President Lon Nol. Civil party Mam Mun lost four siblings, one uncle, and her parents under Duch's supervision at S-21. The testimonies of those who lost family members at S-21 Prison and in other parts of the country were echoed by other survivors, clearly demonstrating the cruel and barbaric nature of the DK regime.

I. Unlawful Torture and Executions

Civil Party Denise Affonço testified that when the KR sent people away for reeducation, they never returned. That fate befell her husband as well as her neighbors: a teacher, a soldier and a police commissioner. She never knew what happened to her husband; it was only when she was transferred to the widow's unit that she realized he had been executed.²⁵⁷ Hav Sophea and other civil parties learned from a DC-Cam document that a close relative of theirs had been detained, tortured, and finally executed at Tuol Sleng (S-21) Prison. Another civil party actually witnessed the killing of a fellow boat passenger, as they were both being transported to Phnom Penh. The passenger was

²⁵⁷ "Vivid Civil Party Testimony: How Khmer Rouge Promises of "Paradise" Resulted in Hell'," *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/vivid-civil-party-testimony-how-khmer-rouge-promises-%E2%80%9Cparadise%E2%80%9D-resulted-%E2%80%9Chell%E2%80%9D>.

executed for the trivial offense of shouting out that they had reached the city!²⁵⁸ Civil party Bay Sophany witnessed the KR militias torture a former soldier's wife, who had been accused of stealing a pumpkin. They tied her up, forced her to kneel down, and beat her body with a wooden club until her flesh was raw. A KR woman then kicked her in the chest, causing her to fall backward. Moreover, she and the other workers were told to join in beating her, and they called her an enemy. They said, "Go fight the enemy. She is the enemy, so everyone should beat her up. She is dishonest! She stole food."²⁵⁹ Despite the orders, none of the workers joined in the beating. The witness said, "If the KR wanted to kill me, I would rather have died. I could not be cruel enough to raise my hand to beat her, since she was lying down unconsciousness."²⁶⁰ The KR committed cruel atrocities against 17 April people (new people).

J. Loss of Property and Means of Livelihood

All female civil parties ended their testimony by alluding to the loss of physical assets, the loss of the support structure of family and close friends, and most importantly the loss of the will to live. Most city residents lost their property and other assets because they were forced to hurriedly vacate their houses, having been told that they would be gone for only three days. When the regime was overthrown, most of them could not live at the same house where they previously lived. Civil party Im Sunty could not resettle in her house because it was occupied by a high-ranking official of the new government. She

²⁵⁸ "Evidentiary Hearing in Case 002/ May 2, 2013- Part 1," Youtube, accessed June 12, 2013, http://www.youtube.com/watch?v=ke0s_DAmaso.

²⁵⁹ Transcript of Trial Proceeding-Case 002 No 002/19-09-2007/ECCC/TC, June 0, 2013, Trial Day 187, 26.

²⁶⁰ Ibid., 27.

could not even leave a message for her relatives who came looking for her there.²⁶¹ The same thing happened to my parents, who were unable to reclaim their house in the middle of Phnom Penh because it was occupied by Vietnamese forces. My mother's property was occupied by people who had returned to the city earlier, before my parents returned from Battambang Province, about 156 miles from Phnom Penh. It took several months for them to walk back to the city. They had to build everything from scratch. Civil party Ting Sokha testified as follows:

“I lost everything, including my house. I lost all the value of my property. In gold, the material loss would have amounted to as much as 925 *tamloeng*²⁶² in value. Some of my family members died. Six of my closest friends died. By the time the Khmer Rouge regime finally fell, I almost lost the capacity to live. I couldn't cope any longer.”²⁶³

K. Emotional Trauma and Inability to Live Normal Lives

The DK regime left Cambodians emotionally traumatized. For many, the absence of definitive news about the fates of their loved ones caused them to spend their waking moments engaged in an endless search for possible clues, even to the point of seeking out fortune teller after fortune teller, hoping for some illumination. Civil party Hav Sophea spoke of her suffering and her inability to continue her education “as an orphan who had survived the regime, living without a father.”²⁶⁴ Civil party Bay Sophany still experiences nightmares and wakes up screaming, dreaming that she was caught by the KR militiamen. She cannot suppress her anguish and tears whenever she thinks of her three children who died in her arms. She remembers every conversation she ever had with her

²⁶¹ Interviewed with Im Sunty, August 22, 2013.

²⁶² Measurement unit for precious metals in Cambodia. One *tamloeng* equals about 1.3 ounces.

²⁶³ “Civil Party: ‘We were living in a prison without walls’,” *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

²⁶⁴ Interview with CP Hav Sophea, August 12, 2012.

children. Even though she now lives in the United States, she never aspired to have a prosperous life in the U.S. Her suffering was compounded when she observed the children of others receiving higher education and grieved for her children, who would never have that opportunity because they all died during the DK regime. She was not able to have more children due dramatic changes in her health. After enduring nearly four years under the DK regime, she stopped menstruating.²⁶⁵

Others could not carry on with their lives:

“I had nightmares. I had tremors in my chest and I found it difficult to breathe. I had insomnia and could not sleep without taking medication. I want the trial and the prosecution to proceed so that the next generation will understand and remember what happened. In the end, I appeal to Mr. President for justice for me, my family members, and all the victims of the regime, both living and dead. May we all be satisfied with the justice rendered so that we can find peace of mind! I am grateful, Mr. President.”²⁶⁶

4. Did the ECCC Meet Civil Party Expectations?

A. A Safe Haven

The ECCC provided a secure and safe space for the victims of mass atrocities to share their experiences, express their suffering, confront the accused, and contribute to the historical record of the DK period for posterity. After witnessing shocking crimes and seeing many of the perpetrators rise to positions of prominence in the Cambodian government, the civil parties, who were the victims of the mass violence, lost their trust in institutions. Moreover, since the fall of the KR, no formal institution had made any facilities available to the significant numbers of victims so that they could share their

²⁶⁵ Transcript of Trial Proceeding-Case 002 No 002/19-09-2007/ECCC/TC, June 0, 2013, Trial Day 187, 29-30.

²⁶⁶ “Civil Party: ‘We were living in a prison without walls’,” *Cambodia Tribunal Monitor*, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

traumatic experiences of human rights abuses perpetrated by the Communist Party of Kampuchea on Cambodians and other ethnic groups. The ECCC filled this void. As participants in ECCC proceedings, civil parties expressed remorse for their inability to help their families and relatives during the KR regime. By allowing survivors to express their sorrow and listening respectfully to their stories, the court helped the civil parties achieve a sense of closure and regain their dignity.

B. Psycho-physiologic Reactivity and PTSD

Testifying in a criminal court is a stressful experience, particularly when one must relive violent crimes and confront an arrogant perpetrator like Duch. The civil parties exhibited many signs of physical stress while recalling their traumatic memories: agitation, sweating, tremors, a rising pulse, headaches, insomnia, dizziness, and breathing difficulties. Such behavior is called “psycho-physiologic reactivity” by psychologists.²⁶⁷ In the author’s observation, such stress was more pronounced among the female civil parties than the male. Some victims decided to try and condition themselves to the shocking revelations by attending court proceedings every day. Based on diagnostic criteria for post-traumatic stress disorder (PTSD), symptoms include the following: (1) difficulty falling or staying asleep, (2) irritability or outbursts of anger, (3) difficulty concentrating, (4) hyper-vigilance, and (5) exaggerated startle response.²⁶⁸ One civil party, upon viewing photos of dying prisoners covered with blood and concluding at once that her husband must have met a similar death, began hallucinating about her husband in

²⁶⁷ Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in the Hague*, (Philadelphia: University of Pennsylvania Press, 2005), 82.

²⁶⁸ S. Megan Berthold and Gerald Gray, “Post Traumatic Stress Reactions and Secondary Trauma Effects at Tribunals: The ECCC Example,” in *Cambodia’s Hidden Scars: Trauma Psychology in the Wake of the Khmer Rouge*, ed. by Beth Van Schaack et al., (Phnom Penh: Documentation Center of Cambodia, 2011), 94.

the courtroom and became hysterical. She was not alone; several civil parties imagined that their relatives had actually been subjected to all the torture techniques mentioned during the court proceedings. Sensing that PTSD may be widespread, the Victims Support Section requested that a therapist and psychiatrist from the Transcultural Psychosocial Organization (TPO) be present during the hearings. Research by TPO in 2010 concluded that civil party applicants represent a vulnerable group which requires more mental health support than other vulnerable groups in society. Since that time, TPO has provided a special counseling hotline for them.²⁶⁹

C. The Court's Response

During Case 001, it was obvious to the judges in the ECCC Trial Chamber that the victims found it very difficult to recall their trauma and relive the moments when their loved ones were taken away and killed. Learning from this experience, the judges provided the victims and witnesses extra time to collect their thoughts and take a rest if they so wished. The court requested that the defense lower their voices during questioning so the civil parties would not be intimidated by the loudness of their voices. In addition, civil parties were allowed to make a final statement regarding the most significant events that caused their suffering and loss. The president of the Court always said “thank you” at the end of civil party testimony, and the Victims Support Section issued a civil party certificate to each witness to honor and thank them for their participation in the court. Through these means, the court acknowledged their grief and loss.

²⁶⁹ Nadine Stammel et al., “The Survivors’ Voices: Attitudes on the ECCC, the Former Khmer Rouge and Experiences with Civil Party Participation,” *Berlin Center for the Treatment of Torture Victims*, (December 2010), 68.

D. Truth and Justice

Apart from the afore-mentioned personal benefits that the ECCC conferred on civil parties, both as individuals and as a group, the ECCC's greatest contribution was as an agent of truth regarding events which occurred during the KR regime. The court brought justice to bear (though only selectively) on the perpetrators and enabled personal and national healing and reconciliation.

- **Truth**

The civil party participants appeared to be motivated as much by a burning desire to establish the truth about what had happened to their relatives who had been taken away (mostly to S-21 and S-24), as by the desire for justice. One civil party told the judges during her testimony, "I am not here for revenge; I am here to seek the truth."²⁷⁰

The civil parties not only had the opportunity to describe their suffering, but also to question the accused through his legal representative or through the president of the Trial Chamber. They wanted to know why crimes in violation of human rights had taken place during the DK regime and where their relatives had been killed; they also requested the court to help establish an historical record of that dark period in Cambodia's history.

Each day, Duch revealed another layer of truth about his responsibilities and actions inside S-21. Apparently, he had been very committed to his job, even though it entailed the evil work of torture and execution of the S-21 prisoners, regardless of sex, age or race. The testimonies and interrogation also revealed a clearer account of the KR prison system. S-21 was essentially the court of the Communist Party of Kampuchea

²⁷⁰ Transcript of Trial Proceedings- Kaing Guek Eav "Duch", Case file N 001/18-07-2007-ECCC/ TC, 19 August 2009, 0907H, Trial Day 61.

(CPK), where intellectuals, government officers, foreigners, former KR cadres, soldiers, and S-21 guards and their spouses and children were detained and eventually executed as enemies of *Angkar*. As the head of S-21, Duch received detention orders from the Communist Party of Kampuchea, but it was he who devised procedures for eliciting confessions from the detainees through torture and the forced implications of others throughout the country, who were then also arrested. Duch was instrumental in training his staff and other prison personnel in methods of torture. Duch's testimony before the court provided a clear picture of the entire sequence of procedures followed in S-21, from the moment prisoners were arrested and detained, to their living conditions in prison and the torture to which they were subjected, to their execution.

Duch also revealed some of the techniques used by the interrogators in S-21 to torture prisoners:²⁷¹

--a female prisoner had a stick forced into her vagina by a male interrogator

--prisoners were forced to participate in "medical experiments" by being subjected, while alive, to surgery (for purposes of anatomical study) or trials of experimental drugs

--other inhumane acts of torture included the forced drinking of urine and eating of excrement, and the puncture and removal of toenails

--prisoners were psychologically humiliated by having to pay homage to inanimate objects or to a dog wearing a Ho Chi Minh hat

²⁷¹ "Duch Focused on the Ends, Not the Means," Cambodia Tribunal Monitor, June 16, 2009, accessed February 25, 2013, <http://www.cambodiatribunal.org/blog/2009/06/duch-focused-ends-not-means>.

--female prisoners, considered to be “pure” and therefore free from sexually-transmitted diseases, were forced to have their blood drawn in large volumes to be used for wounded KR military personnel. Ultimately, the women weakened and tragically died.

--babies were killed by bashing their heads against tree trunks, throwing them up in the air and catching them with the bayonet of a gun.

Duch answered most of the questions posed to him, which marked his contribution, but not all civil parties were convinced that he was telling the truth. Civil party Pung Sunthery and her mother, Im Sunty, asked Duch where Professor Pung Ton (their father and husband, respectively) had been executed. They wanted to know exactly where he had died so that they could perform a Buddhist ritual to release his soul from this world. Duch’s reply sounded evasive to them. He could not recall whether Professor Phung Ton had been in S-21, pointing out that there had been lots of prisoners in S-21 at the time. However, he hazarded a guess based on the professor’s date of execution, that he had been executed at the killing field of Beung Cheung Ek. Phung Sunthery found Duch’s answer to be disingenuous. Professor Phung Ton was well-known. He had been Duch’s teacher and had also worked in the former government. Furthermore, Duch himself saw all the prisoners’ documents of confession. It was difficult to believe that he had been completely unaware of the circumstances surrounding the death of Professor Pung Ton.

Many former teachers, including some who had taught Duch himself, were detained and eventually killed at S-21. In one case, Ke Kim Huot, a former teacher of

Khmer Literature, was detained very long, along with his wife, Dim Soroeun, former teacher of Duch's who was tortured by having a male interrogator force a stick into her vagina. Duch stated that he was not aware of the incident until he was later told by a guard.

These two instances suggest that Duch was reluctant to admit to having been a party to the violence committed against his own teachers, since in Cambodian culture teachers are particularly revered and honored as second parents. In Cambodian morality and Buddhist principles, one can never be forgiven for having committed a crime against a teacher (second parent). A person who killed their parents would fall to the deepest level of hell and would never reincarnate, based on the explanation of a monk who attended the hearing.²⁷²

However, Duch was quite helpful to other civil parties. Hav Sophea wanted to know who had been responsible for incarcerating her father in S-21 and where he had been killed. Duch informed her that since her father had been a cadre from Hanoi, only the Communist Party of Kampuchea could have ordered his arrest. He also admitted that her father had been killed in S-21. On further questioning, he finally admitted that he himself had given the order for the execution of Hav Sophea's father at S-21. These responses gave Sophea the answers she was seeking. "I am satisfied now. I wanted the accused to say that he had killed my father. I wanted him to admit before the court that he perpetrated evil upon my beloved father and me, not just for my benefit, but for the whole nation and indeed the whole world."²⁷³

²⁷² Interview with a monk, who attended Case 002 trial, August, 2012.

²⁷³ Interview with Civil Party Hav Sophea, August 12, 2012.

The court is not only providing an historical truth for posterity, but also a spiritual truth that can release the souls of the dead victims of S-21 from the prison compound. The souls of the victims will receive merit by virtue of their relatives performing a religious ceremony for them, so they can be reborn and their souls can stop wandering around S-21 and the killing fields. Through Duch's answer to her question, civil party Sophea was able to collect the dirt in front of the place where her father was detained to represent his bones. She then combined the dirt with jasmine from the monks who prayed during the ceremony, which was performed in honor of her father after the decision of the Trial Chamber. She called on the soul of her father to come with her to her home, so she could perform a proper ceremony for him. She placed the dirt (representing his bones) with her deceased mother's bones, so they can be together in peace and reincarnate. During her participation in the court, Sophea dreamed of her father for the first time. He had enough food, but had only a *krama* (scarf) to wear. She realized that ever since she knew that her father was dead, she never offered clothing and consequently he did not have clothes. Therefore, she bought clothes and offered them to her uncle, who is an *acarya* (a noble person who knows the Dharma in Buddhism). Based on Khmer tradition, he prayed and dedicated her merit to her father. In her second dream, Sophea saw her father again and this time he was wearing proper clothes. He smiled at her. She interpreted that to mean he was pleased that she had fought for justice for him and was encouraging her to be strong.²⁷⁴

Justice

²⁷⁴ Ibid.

Civil participants spoke of wanting truth and justice in the same breath. One civil party summed up the position of the group at the end of her testimony. “In the end, I urge and appeal to you, Mr. President, to provide justice to me, to my family members, and to all the victims—those who survived and those who died during the regime—so that they can feel that justice has been served and find peace in their minds.”²⁷⁵ Individual informants, who aspired to civil party status, faced the possibility of a perceived personal injustice: applicants had to prove eligibility (victimhood) by demonstrating that they were either victims themselves or were related to KR victims at the specified crime sites²⁷⁶ in Case 001. This process required strict documentation of identity and relationships. Hav Sophea thought she might be rejected because she was born after her father was arrested, and because the date of birth on her identification card did not match her actual date of birth due to an error. However, ultimately she was able to gain acceptance as a civil party in the Trial Chamber. Hong Savath, the only member of her family to survive the atrocities of the DK regime, filed an application to seek justice for her uncle, who was detained and eventually killed in S-21. Unfortunately, her application was rejected by the Trial Chamber because she could not produce any photograph or documentary evidence to prove her uncle’s detention at S-21 or any special bond of affection or dependency to support her relationship with her uncle.²⁷⁷ Nevertheless, Hong Savath pursued her case all the way to the Supreme Court Chamber, submitting photographs of her uncle along with other supplementary information about their relationship, and she was finally

²⁷⁵ “Civil Party: ‘We were living in a prison without walls’,” Cambodia Tribunal Monitor, accessed June 12, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

²⁷⁶ Crime Site in case 001, S-21 (Tuol Sleng prison complex), S-24 (Prey Sar, Labor Camp), Beung Chheung Ek or the Killing Field.

²⁷⁷ Case 001 Appeal Judgment, Case file/Dossier No 001/18-07-2007-ECCC/SC, February 3, 2012, 268.

accepted as a civil party in the case. Not everyone was so fortunate: twenty-two (eleven female and eleven male) aspiring civil parties were rejected by the Trial Chamber because of inadequate proof of either direct or indirect victimhood and also the special bonds of affection or dependency in relation to the deaths under Case 001.²⁷⁸ The Supreme Court Chamber granted acceptance to four female and four male civil parties, reversing the Trial Chamber's decision, after applicants submitted supplementary information proving their victimhood and their relationship to the deceased. The Supreme Court Chamber rejected the other seven female and seven male civil party applications due to lack of evidence.

In Case 001, civil parties were seeking justice related to the sentencing of Duch, the recognition of victimhood by the accused, and the victims' claims for reparations. In Case 002, they wanted to achieve the inclusion of gender crimes. Some civil parties had extremely strong views on the justice they felt Duch deserved. Savath "thought that I would never find justice and I know clearly what is black and white. When I was interviewed by the local and international media, I promised myself that if the judges decided to release Duch, I would commit suicide."²⁷⁹ Such a decision (to release Duch) would have indicated to Savath that the court was giving license to very bad people who committed serious human rights abuses to hurt, harm, or kill more people in the future. She and others were very unhappy when the Trial Chamber initially sentenced Duch to jail for only nineteen years. On appeal, however, the High Court sentenced Duch to life in prison and the happiness of Savath and other civil party participants knew no bounds.

²⁷⁸ Case 001, ECCC, accessed June 7, 2013, <http://www.eccc.gov.kh/en/case/topic/1>.

²⁷⁹ Interview with Hong Savath, July 13, 2013.

Lay Chan appealed his civil party rejection by the Trial Chamber to the Supreme Court, but was eventually rejected by the Supreme Court as well. He told me in an interview that he was not disappointed and did not blame the Chambers for his civil party application rejection because the court had to rule based on the evidence. He did not have solid evidence, such as a photo or the listing of his name in the prisoner log, to prove that he had been detained in S-21 because he was blindfolded the entire time.²⁸⁰

Duch's sentence signified the end of mass executions and the culture of impunity in Cambodia. However, some people were disappointed by Duch's denial that certain civil parties were either victims or related to victims killed under his orders. Everyone was disappointed by the court's decision to deny reparations to the victims in Case 001.

E. The ECCC's Impact on the Civil Parties

- **Empowerment**

The civil parties admitted to the court were very honored by the opportunity to sit in the courtroom and confront Duch (in Case 001) and the other accused (in Case 002). Hav Sophea summed up her reaction: "I can't believe myself. I am just a simple peasant, but I have a chance to talk before all these highly knowledgeable people: national and international judges, prosecutors, and lawyers. They listen to me carefully and note what I say."²⁸¹

Civil parties felt immensely empowered by their right to share the stories of their suffering and to ask questions of the accused. They were satisfied with their experience at the ECCC. The female international Civil Party Co-lead Lawyer in Case 002, Elizabeth

²⁸⁰ Interview with Lay Chan, August 13, 2012.

²⁸¹ Interview with Hav Sophea August 12, 2012.

Simonneau-Fort, stated, “As a party to the proceedings, they can make recommendations and they can question the accused; so the entire international community is watching Cambodia, this trial specifically. Particularly, Cambodian people living abroad are following this trial.”²⁸² Alain Werner, an international lawyer, made the same point in an interview conducted by the Cambodia Tribunal Monitor: “About twenty civil parties recounted their experiences in Court. I know that some of my own clients were very relieved immediately after their testimony and some even felt [a sense of] empowerment. I hope that the final judgment will give to all the civil parties the sense that their involvement has been useful for this Chamber in understanding the extent of the grief still suffered by the survivors and the families of the people who died at S-21.”²⁸³

- **Getting to Know Duch: Animosity, Understanding, and Forgiveness**

Taken as a whole, Duch’s performance at the court can only be described as an enigma: he was by turns arrogant and remorseful. His appearance did not suggest any anguish: he came to the hearings every day, with an escort from his cell in the temporary detention center of the ECCC, looking elegant and polished. This bothered several of the civil parties. On the first day of his trial, Duch begged all Cambodians to open “a door” for him to apologize. However, when he refused to admit that the crimes he had committed had caused suffering and pain, he revealed another side of his character. Throughout his testimony, Duch was occasionally remorseful and begged forgiveness.

²⁸² “Interview with Defense Counsel François Roux,” Cambodia Tribunal Monitor, September 21 2009, accessed March 04, 2013, <http://www.cambodiatribunal.org/blog/2009/09/interview-defense-counsel-fran%C3%A7ois-roux>.

²⁸³ “Interview with Alain Werner on September 21, 2009,” Cambodia Tribunal Monitor, accessed January 9, 2013, <http://www.cambodiatribunal.org/blog/2009/09/interview-alain-werner>.

Some thought he deliberately adopted such a strategy because he felt that was what his victims wished to hear.

Opinions of Duch remain divided. Some consider Duch a fox, an unpredictable animal that always hides its true intentions, feigning innocence and waiting for a chance to attack. They do not believe that Duch provided the court with a full account of what transpired in S-21, as he had promised. Moreover, even though he said that he accepted responsibility for all the atrocities that happened under his watch in S-21, S-24, and M-13,²⁸⁴ the fact that he asked the court to release him proved to them that he did not truly admit his guilt. Moreover, Duch argued that he was not the sole head of the prison system—he was only one of 196 prison chiefs. He asked the court why he should be the only one prosecuted.

Duch's international defense lawyer, Francois Roux, told the court that his client felt remorse. Duch broke down in tears when he visited S-21 and the killing field of Choeung Ek, where he was so moved that he prayed to God, asking forgiveness from the victims of S-21 who were buried there. He said he had never personally killed anyone. Before he was detained, Duch regularly provided offerings for the souls of his victims and continued to pray for their souls and beg for forgiveness.²⁸⁵ His lawyers tried to convince the court that even though he had been the head of S-21, he was merely carrying out orders from his superior, Son Sen. He followed those orders to protect his own family during the oppressive DK period.

²⁸⁴ Duch was in charge of M-13, a detention center of the Khmer Rouge before they took over the entire country.

²⁸⁵ "Chamber and Parties Seek Expeditious Trial, But at What Cost?," Cambodia Tribunal Monitor, June 23, 2009, accessed March 04, 2013, <http://www.cambodiatribunal.org/blog/2009/06/chamber-and-parties-seek-expeditious-trial-what-cost>.

Duch's lawyers asked the public to place themselves in Duch's position, and this suggestion was very helpful in promoting understanding. Many survivors, who had either been detained themselves or had relatives who had been detained in S-21, learned about the people involved in the crimes committed there and developed an understanding that not all of the people working under the KR were cruel. In those oppressive times, they simply had to carry out their assignments in order to survive. As the truth about the KR began to unfold, those present in the courtroom began to realize the conditions and circumstances of life and work under the regime.

Did Duch receive forgiveness? In almost all cultures, forgiveness is a requirement for ending the cycle of violence. As Minow stated, "Through forgiveness, we can renounce resentment and avoid the self-destructive effects of holding on to pain, grudges, and victimhood."²⁸⁶

Some civil parties felt that Duch's apology indicated he was admitting his misdeeds. Those civil parties did not wish to continue the cycle of *karma* with Duch into the next life. Buddha taught that "vindictiveness ends by not being vindictive." If we continue to hate or feel vindictive, the cycle will continue. They therefore accepted his apology in order to seek release from their anger. One female civil party, Sin Sinet, said that she forgave Duch and the Khmer Rouge according to the Buddhist phrase, "(I) *a hosa karma* (forgive) *kat* (him)."²⁸⁷

Others were more guarded. Two of the female civil parties, Ting Sokha and Hav Sophea, echoed the sentiments expressed by Youk Chhang, the Director of DC-Cam,

²⁸⁶ Minow, *Between Vengeance and Forgiveness*, 14.

²⁸⁷ Interview with Sin Sinet, Civil Party Case 001/ 002, February, 2013.

who pointed out, “The Tribunal is important because it is what brings the cycle to an end for us, it brings closure. It might not please everybody because the loss and suffering is too extreme, and there is nothing that can ever be enough.”²⁸⁸ Hav Sophea put it this way, “When I heard Duch sentenced to life, I felt as if ‘*dak banla cheng pi trourng*’”²⁸⁹ (“a thorn had been removed from my chest”). However, personally, Hav Sophea could not forgive Duch for what he did to her father. According to Buddhist belief, Duch cannot reincarnate as a human being until he has paid for his bad *karma* in hell. Hav Sophea prayed for him to live long enough to receive his *karma* in prison in this life, so that she could witness it.

In the end, forgiveness is an individual matter. As Youk Chhang stated, “In the end, it is the obligation of the victim to pick up all the broken pieces and reassemble them. Each person knows where the broken pieces are and which piece belongs to the other; only you can decide whether you want to reconcile. No one can do it for you.”²⁹⁰

• Healing and Reconciliation

According to Judith Herman, healing occurs in three stages: (a) securing safety, (b) remembering and mourning, and (c) reconnecting with ordinary life.²⁹¹

²⁸⁸ Youk Chhang, Director of DC-Cam, in a speech at UCAL-Berkeley on “Connecting the Broken Pieces after the Cambodian Genocide: Legacy as Memory of a Nation,” YouTube, accessed January 21, 2013, <http://www.youtube.com/watch?v=vZuD4Fo-ZOc>.

²⁸⁹ Interview with Hav Sophea, August 12, 2012.

²⁹⁰ “Connecting the Broken Pieces after the Cambodian Genocide: Legacy as Memory of a Nation” YouTube accessed February 27, 2013 <http://www.youtube.com/watch?v=vZuD4Fo-ZOc>.

²⁹¹ Charbonneau, introduction, 8.

Security is important for survivors of war and atrocities. They require a safe space in which to recreate their routine of activities and reconnect to a social network that can supply emotional and practical support. Herman points out that “by removing the fear of the repetition of violence, more psychic space is created for healing.”²⁹²

The second stage of remembrance and mourning really refers to “telling or narrating.” Reconstructing the traumatic memory out loud (as in the courtroom of the ECCC) can help bring about catharsis.²⁹³ This is what appears to have happened with the civil parties themselves. Their participation in Cases 001 and 002 helped them gain a sense of release from their tension. Most of them felt better, slept better, and felt more emotional stability than at the start of the trial for Case 001.

One could argue that selective prosecution or justice, for instance, holding only select people to account, will not ensure healing and reconciliation. Most civil parties understood that it was not possible to bring all the former KR officers to justice for their crimes, since the state (as a whole) committed atrocities during the DK period. They also knew that some former high-ranking KR officials were now in the top ranks of the current government. Some civil parties were even afraid to speak out for that reason. However, according to Martha Minnow, even selective prosecution can promote perceptions of fairness in other places,²⁹⁴ inside and outside the country. She also cited Marc Oseil, who said, “Trials following mass violence can help a nation consolidate memories and engage in secular rituals of commemoration.”²⁹⁵

²⁹² Charbonneau, introduction, 9.

²⁹³ Ibid.

²⁹⁴ Martha Minnow, *Between Vengeance and Forgiveness*, (Boston: Beacon Press, 1998), 44.

²⁹⁵ Ibid., 46.

It appears from the Cambodian experience that civil party participation marked a significant advance in transitional justice and healing, though it is still too early to draw definitive conclusions about the extent of healing and reconciliation in the country. Healing appears to have occurred in many ways: the feeling of empowerment that the court conferred on the civil parties through the acceptance of applicants and their testimonies and questioning; a fuller understanding of the regime and the procedures in S-21 that developed with the revelations of the truth through testimonies and questioning; the catharsis that accompanied the “telling” during testimonies; the respect that civil parties received when they persevered in attending the ongoing hearings.

Case 002 civil party Chan Socheat commented during her interview, “After I had the opportunity to testify before the court, I felt relieved. Yet, it would never compensate for my loss and suffering during the DK period. I am pleased to have Khiev Samphan and Nuon Chea apologize to the souls of my parents and siblings who died during DK so that they may rest in peace. I feel I have fulfilled my gratitude to them. Even though they are deceased, they have me as their daughter to fight for justice on their behalf. Their deaths are not meaningless, and the former leaders of the DK have to be judged.”²⁹⁶

Healing manifested itself in different ways for the civil parties. Some sought relief through silence, not mentioning the atrocities in the family circle. For others, the sharing of their stories with the next generation helped to heal their wounds. Some found that watching comedies made them forget their sadness. One civil party in Case 002 found release by writing books and novels about the KR regime. Civil party Sophany mentioned

²⁹⁶ Phone Interview with Chan Socheat, September 8, 2013.

that she feels release and healing when she writes about her life during the DK.²⁹⁷ Her award-winning book is entitled “Under the Drops of Falling Rain.” Another informant, who is a writer on social and educational matters and worked for a women’s organization, gave up writing about the DK regime because she found it too painful to recall those hardships. Another civil party is working to raise funds to help young children continue their education and thus to rebuild society. Therefore, it is apparent that individuals find different means to heal and to move forward. Some are able to connect the past to the present and find a beneficial way to deal with the atrocities of the past.

Civil parties who filed applications against Duch are from various backgrounds. One group consists of former Khmer Rouge and relatives of former Khmer Rouge soldiers, cadres, and S-21 staff. The second group is comprised of survivors of S-21 and S-24. The third group is represented by relatives of intellectuals and foreigners who were detained in S-21. Coming from different backgrounds and status, they did not always trust each other. I recall being asked by a staff member of the Witness Support Unit not to translate or ask many questions of a civil party who asked for protective measures. I was asked to translate for another civil party who wanted to know her better.

In another case, a civil party approached me while I was working to facilitate the attendance of another civil party in court. He said, “A Phors! You know, she used to be the Chief of the Women’s Unit during the KR regime. I don’t know how many people suffered because of her.”²⁹⁸ I told him and other civil parties that they should not be afraid of her or discriminate against her. All people who participate in the court are

²⁹⁷ Interview with civil party Sophany, August 25, 2012.

²⁹⁸ Observation during the Civil Party Participation in Duch Trial, 2010.

victims of the DK regime, even if they are former KR. We are on the same mission for truth and justice. As the trial progressed, they gradually got to know each other and shared stories of DK, some sad and others full of silliness, such as highlighting times when they were too scared or too courageous. By the middle of the trial, they had become friends and were sharing food during lunch, hanging out and assisting each other when they became sick, by coining or providing support for family members. They were also very united in terms of protecting the interests of victims, such as boycotting the trial when the judges did not allow their lawyers to pursue certain lines of questioning or demonstrating against the Cambodian National Rescue Party when a party leader publicly denied during a political campaign that atrocities were committed in S-21. They keep in touch with each other by telephone, visit each other's houses, and attend ceremonies together. Through my observation of their activities, the court has served as a space for them to learn, understand and reconcile with each other. They know that not all Khmer Rouge are bad people. During the oppressive DK regime, people did not have much choice about how to behave. Even though the civil parties came from different backgrounds, I observed that they reconciled among themselves and found common ground and purpose. The hope is that when they return to their respective communities, where KR may still be living in their neighborhoods, they will be able to live together peacefully.

In summary, my observations suggest that the female civil parties whom I interviewed were satisfied with the proceedings and with the court, especially their lawyers, prosecutors and the judges who offered them all kinds of support, acknowledged their suffering, empowered them to testify, and helped them experience a sense of

closure. The female civil parties who actively participated in the proceedings are more likely to reconcile their feelings and heal because they have been able to express their suffering, be empowered, be acknowledged, build trust through dialogue and conversation, and also be comforted. They participated in defining the historical record and promoting the kind of education which will hopefully bring sustainable peace to their nation. The pursuit of truth and justice played a very important role in healing and reconciliation for the female civil parties in my research. People could only survive the DK regime in Cambodia by lying, manipulating, and pointing fingers at others; hence, people did not trust or believe each other very easily after the fall of the regime. However, the ECCC and its truth-telling are helping to rebuild that lost trust and to reconnect people from many different walks of life.

Chapter 5: Women’s Influence on the Cambodian Legal System and Historical Record

“I am happy to be able to contribute to the Court’s work. I have been selected to be a focal point of contact in Kampong Siem, so I assist many victims from other villages in filing their applications after they are invited to participate in the Court proceedings. It pleases me to assist other victims in seeking truth and justice for their relatives.” Nhim Kimhuern, civil party in Cases 001/002, whose two brothers and pregnant sister-in-law were smashed under Duch’s supervision at S-21.

This chapter will focus on the many contributions that women are making to improve life in Cambodia. First, they have contributed to fighting impunity and building trust in the court system. They have demonstrated that women can succeed in advancing gender and human rights and promoting the Rule of Law in Cambodia. Second, women are contributing to a better understanding of legal proceedings and to more just legal decisions. Third, female civil parties have elevated the awareness of crimes of sexual violence. Fourth, they have established the truth about the DK regime for the historical record, which has contributed to healing and rebuilding of trust within communities.

1. Fighting Impunity: the Independence of the Judiciary

Perhaps the greatest contribution that female civil parties have made to governance in Cambodia has resulted from their fight against the culture of impunity so prevalent in the country. This aspect of the culture is deeply-rooted in Cambodian society. In keeping with tradition, Cambodians seek compromise rather than justice through the courts, particularly because the courts are widely perceived to be corrupt and subject to the sway

of the rich and powerful. Bribery has become the de facto culture of the court system.²⁹⁹ A World Bank survey in 2000 revealed clearly that “the majority of Cambodian people view the court to be full of corruption, void of integrity, and a tool for the rich and powerful.”³⁰⁰ Sixty-four percent of respondents agreed with the statement that “the judicial system is very corrupt;” sixty-three percent held that “the judicial system is only for the rich and powerful;” and fifty-eight percent believed that “the judicial system does not deserve any trust.”³⁰¹

Kheng Un’s research also points out the prevalence of interference in court matters by the powerful elites. This contradicts the Cambodian Constitution, which clearly recognizes the judicial system to be an independent institution, responsible for promoting the Rule of Law and protecting political and civil liberties. In fact, Article 130 of the Constitution explicitly states, “the judicial power shall not be granted to the legislative or executive branches.”³⁰² However, in practice, the judiciary is manipulated by political elites and the executive branch of government (primarily the Ministry of Justice). Brad Adams points out, in Cambodia’s Judiciary, that the judicial system has been used as a political tool since the PRK period.³⁰³ Political interference increased after the withdrawal of UNTAC in 1993. Projects, funded in 1995 by USAID and the French government and aimed at legal reform through the training of judges, court officials,

²⁹⁹ Kheang Un, “The Judicial System and Democratization in the Post-Conflict Cambodia,” in *Beyond Democracy in Cambodia: Political Reconstruction in a Post-Conflict Society*, ed. Joakin Øjendal et al, (Copenhagen, Denmark: NIAS Press, July 2009), 70.

³⁰⁰ Kheang Un, “The Judicial System and Democratization in the Post-Conflict Cambodia,” 90.

³⁰¹ Ibid.

³⁰² The Cambodia Constitution, Article 130.

³⁰³ Brad Adams, “Cambodia’s Judiciary: Up to the Task,” in *Bringing the Khmer Rouge To Justice: Prosecuting Mass Violence before the Cambodian Courts*, ed. Jaya Ramji et al. (New York: The Edwin Mellen Press, 2005), 138.

related government executives, and law students, proved ineffective.³⁰⁴ Officials in the judiciary are determined to preserve their jobs. Judges decide cases based on nepotism, patronage, and politics rather on the basis of the law.³⁰⁵

The judicial treatment of the recent Chut Wutty case is illustrative. Chut Wutty, an environmentalist who was accompanying two foreign reporters from Cambodia Daily News to investigate illegal logging and the illegal collection of plants by drug companies, was shot to death in April 2012. The suspected killer was also unintentionally shot and killed. The Chut Wutty case was dropped by the courts six months later on the grounds that “the perpetrator was already dead,”³⁰⁶ even though authorities had put forward a series of conflicting scenarios of what had actually occurred. This case is not the only one in which there has been a miscarriage of justice. The investigation into the murder of the Free Trade Union President, Chea Vichea, ended with the conviction and sentencing of two “scapegoats,” and a municipal court judge who tried to drop the charges against the scapegoats was removed from his post.³⁰⁷ As several human rights organizations have reported, such disregard for the law or ineffective enforcement of the law tends to silence the voices of opposition. Victims therefore seek compromise rather than take their case to court.

Female civil parties, who decided to cooperate with the ECCC after thirty years of silence, were encouraged by the participation of the international community, the

³⁰⁴ Adams, “Cambodia’s Judiciary,” 152.

³⁰⁵ *Ibid.*, 85.

³⁰⁶ May Titthaara, “Provincial Court Drops Chut Wutty Case,” *The Phnom Penh Post*, October 4, 2012, accessed December 28, 2012, <http://www.phnompenhpost.com/2012100459109/National/provincial-court-drops-chut-wutty-case.html>.

³⁰⁷ Sarom Kim et al., “Guilty Verdicts Upheld in Chea Vichea Slaying,” *The Phnom Penh Post*, December 28, 2012, accessed December 28, 2012, <http://www.phnompenhpost.com/2012122860522/National/i-am-not-a-murderer.html>.

involvement of judges of international reputation, and the assurance of international standards of justice. According to surveys conducted by the University of California at Berkeley, quoted by John Ciorciari and Sok Kheng Ly, seventy-four percent of them believe that the ECCC will contribute to justice for Khmer Rouge victims and their families.³⁰⁸ Respondents were confident that the hybrid court would listen to the witnesses and civil parties, cross-examine the defense and the prosecution, and base its decisions on an independent and impartial assessment of the evidence. They expected to receive true justice from the court. Moreover, the very involvement of the civil parties and the ability of the Court to listen to both sides of the case—from the defense and the civil parties—enhanced the impartial image of the Court for Cambodians who were following the proceedings through television or other media. Nevertheless, from the onset, these civil parties had to fight for their right to participate, for the truth to emerge, and for justice to be served (see sections below). They had to fight for acceptance as civil parties, for the right to cross-examine the accused and persist with their questioning despite the unwillingness of the accused, and to take matters to the High Court when they were disappointed with the decision of the Trial Chamber.

Im Sunt, a 76-year-old civil party of the ECCC, whose husband was detained and executed at S-21 prison, set an example. She participated in the proceedings not to seek revenge, but to fight against impunity. She said that even if Duch (the head of S-21 Prison) or the other accused were to receive the death penalty, nothing could bring back her beloved husband and recompense her loss. “I am very old now; my participation today is for the sake of the country and the young generation, to end the unlawful killing

³⁰⁸ John D. Ciorciari and Sok Kheng Ly, “The ECCC’s Role in Reconciliation,” in *On Trial: The Khmer Rouge Accountability Process*, ed. by John D. Ciorciari et al, (Phnom Penh: DC-Cam, 2009), 335.

and injustice that I witnessed before and during the DK regime, so it will not set a bad precedent for the next generation.”³⁰⁹

Efforts of the civil parties culminated in the High Court’s decision to overturn the Trial Chamber’s original verdict against Duch of 19 years in prison and sentence him to life in prison. For the first time, the survivors of S-21 and the civil parties felt that justice had been served, and the culture of impunity had been defeated. Hav Sophea voiced the thoughts of other civil parties when she said that the truth and justice that the ECCC upheld in Case 001 was not only for her and her father, but for all Cambodian people. Hav Sophea said that she hoped to live in a civilized society, where everyone respected the rights of others and where Cambodians could receive equal protection under the law.

A. Promoting the Rule of Law

Without the Rule of Law, people live in fear, afraid to challenge wrongdoers and reluctant to seek justice. Aung San Suu Kyi, in her conversations with Cambodian politicians, realized that Cambodia was having trouble advancing democracy because the country’s leaders had emphasized the need for free elections and a free legislature, instead of stressing the need for the Rule of Law.³¹⁰ Law provides the checks and balances necessary to ensure equal justice and equal opportunities for both rich and poor. As the 2006 World Development Report pointed out, “The justice system can do much more to level the playing field in the political, economic, and socio-cultural domains.”³¹¹ Ojendal and Lilja, citing Brinkerhoff, explain: “Reconstructing legitimacy in post-

³⁰⁹ Interview with Im Sunty, Civil Party case 001/002, August, 22, 2012.

³¹⁰ Daw Aung San Suu Kyi: The Chubb Lecture 2012, September 27, 2012, Yale University, accessed November 27, 2012, <http://www.youtube.com/watch?v=7Bomq4RPGgQ>.

³¹¹ Un, “The Judicial System and Democratization in the Post Conflict Cambodia,” 70.

conflict states involves expanding political participation and inclusiveness, reducing inequality, combating corruption, and introducing contestability.”³¹² This process can be effectively pursued only when an independent and effective judicial system upholds the Rule of Law. This is precisely the goal that the civil parties had in mind when they joined ECCC proceedings, actively seeking truth and justice for their relatives and for all Cambodians.

B. Freedom of Expression

During the KR regime, people were not allowed to question, challenge, talk, express emotion or even to move or walk without permission. As many survivors described, if they needed permission to go somewhere, “they measured the land for us to walk.”³¹³ Another female civil party mentioned during her testimony that “we were living in a prison without walls.”³¹⁴ Ben Kiernan summed up the regime thusly: “The regime probably exerted more power over its citizens than any state in world history. It controlled and directed their public and private lives more closely than government had ever done.”³¹⁵ Many Cambodians felt so claustrophobic, depressed, and hopeless that they fell sick, their illness no doubt exacerbated by starvation, disease, and exhaustion. Some of those who lost hope even died or committed suicide.³¹⁶

³¹² Ibid.

³¹³ Interview with Ting Sokha, August 24, 2012.

³¹⁴ Civil Party: “We Were Living in a Prison without Walls,” Cambodia Tribunal Monitor, accessed February 22, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

³¹⁵ Kiernan, *The Pol Pot Regime*, 464.

³¹⁶ Civil Party: “We Were Living in a Prison without Walls,” Cambodia Tribunal Monitor, accessed February 22, 2013, <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

In an interview with Voice of America, Professor Steven Pinker, a psychology professor at Harvard University, posed an intriguing question about the lack of expression of any public outrage during the DK/KR regime:

“So how was it that in the Killing Fields in Cambodia, the Holocaust, it looked like all of the people were fooled all of the time? And one of the reasons is that the people were intimidated to say what they wanted. You might have very few people actually believing the terrible ideology, but everyone thinks everyone else believes it because no one is or can say the truth because they will immediately get killed.”³¹⁷

The civil parties are now emerging to explain to present-day Cambodians how such a situation came about. The populace under the KR had no recourse because the KR eliminated the justice system and totally suppressed freedom of expression. The civil parties believed that the Rule of Law and the freedom to speak out would be restored by the ECCC. They believed that they would be able to express their thoughts following the questioning by the prosecutors, the defense, civil party lawyers, and judges, and that they would be allowed, at the end of their testimonies, to describe the conditions that created the overwhelming feelings of suffering and loss that they experienced or witnessed during the KR regime. The civil parties hoped to be able to comment, advocate and provide suggestions, outside the courtroom, in response to what the judges, defense and prosecution had said in the Court. These beliefs and hopes drove the actions of the civil parties attending Cases 001 and 002.

When the Court rejected civil party status for some of the hopeful applicants, they expressed their disappointment to the press; their emotional responses to the situation were reflected in the media and drew public attention, both in Cambodia and international

³¹⁷ Steven Pinker’s interview with Sophat Soeung, Voice of America, Khmer Service on April 25, 2012.

circles. When the civil party lawyers were denied the right to question the character witnesses, who testified about Duch's character, the civil parties took their cause to the press at the Tuol Sleng Genocide Museum and explained how such questioning was critical for revealing the truth about the motives of the accused. Through their detailed and persistent questioning, the civil parties also helped reveal Duch's evasiveness when confronted with the cases of Professor Ton and the wife of Ke Kim Hout, both of whom were former teachers of Duch. Similarly, their interrogation of Nuon Chea, Khieu Samphan, and other former leaders in Case 002 compelled those leaders to accept responsibility for the crimes committed during their watch. Since civil parties were formally recognized as participants within the ECCC, their freedom of speech was fully respected, and their comments and ideas were taken seriously. The mass media ensured that their opinions regarding the Trial Chamber and High Court verdicts against Duch were shared with people within Cambodia and around the world. Thus they helped to reinforce the point made by Professor Pinker:

“I think it is a frightening development because any society can only attain the best outcome for its citizens if people are allowed to criticize each other, are allowed to criticize their leaders. If you can't say the leader is wrong, how will you ever find out when leaders are wrong? And they will be wrong because they are human beings.”³¹⁸

The exercise of freedom of speech by the civil parties served as a model for all Cambodians, ensuring that freedom as a basic right of citizens in a democratic country.

³¹⁸ Steven Pinker's interview with Sophat Soeung, Voice of America, Khmer Service on April 25, 2012.

C. Equality before the Law

The civil parties spoke up against biased treatment of the civil party lawyers when those lawyers were barred from questioning the character witnesses in Case 001. The civil parties had been assured that the Internal Rules of the ECCC permitted both the defense and the legal representatives of the CPs to question the accused and the witnesses during the proceedings. Usually about ten civil parties filled the seats reserved for them each day in the courtroom; but on August 31, 2009, when the civil parties' rights were denied, twenty of them boycotted the Court and took their case to the media at the Tuol Sleng Genocide Museum. Similarly, in Case 002, when Nuon Chea, Khieu Samphan, and other former KR leaders denied responsibility for the crimes against humanity committed by the DK regime, the civil parties (male and female) came forward to criticize the leaders and demand accountability. Simply because they had been the country's leaders did not mean that they could escape the legal net. The civil parties maintained that everybody is equal under the law. As a civil party, Chum Mey (Cases 001/002), told the author: "I don't want the accused to face injustice by giving him more punishment than he deserves. I just want justice for both victims and the accused."³¹⁹

The civil parties again highlighted the issue of unequal treatment of defense and prosecution when they realized that they were poorly represented by their attorneys, whereas the defense had very well-trained, experienced lawyers in Francois Roux (defending Duch in Case 001) and Michael Karnavas (representing Ieng Sary, the former Foreign Affairs Minister, in Case 002), who had practiced before the International Criminal Court for about 35 years. These lawyers are funded by the United Nations. The

³¹⁹ Interview with Chum Mey, July 21, 2012.

concerns of the civil parties sent a message to the Court and the international agencies involved that they should not only seek justice for the accused, but also support the concerns of the survivors. In response, at the start of Case 002, the Court appointed Co-Lead Lawyers for the civil parties to coordinate the positions of the lawyers representing individual groups of civil parties. This arrangement provided some degree of equality before the law for the defense and prosecution, and the court is now working to serve the interests of the people. This is truly an historic change in the framework of the legal system in Cambodia.

2. Developing a Better Understanding of Legal Proceedings

Initially, civil parties attended regular sessions with the legal representatives provided by Intermediary Organizations (IOs) in order to understand the ECCC's legal proceedings or receive briefings (couched in simple everyday language) on the ongoing hearings. When Case 001 concluded in early 2010, funding for the victims' participation projects of most of the IOs was cut and the ECCC then stepped in to ensure that the civil parties understood their rights as well as the trial proceedings in general. The ECCC had more resources and facilities than the IOs, which had previously carried out this work.

The Victim Support Section (VSS) of the ECCC also organized Regional Civil Party Forums in various provincial centers to enable civil parties who lived far from Phnom Penh to receive updated information about the proceedings and to meet and discuss issues with their lawyers. This work was extended by some female civil parties, who returned to their villages to share the information they had learned with other villagers, particularly those who wished to file applications for civil party status and

participate in the proceedings against the former DK leaders. One civil party, Nhim Kimheurn, told the author that she had been assisting many survivors in her community to understand the court proceedings, access information, and visit the VSS. Ms. Nhim joined with representatives from other provinces to network with TPO and other IOs and to serve as a liaison between survivors and the ECCC. Different units of the ECCC, including the Public Affairs section, have helped these survivors to attend the court hearings and seek justice for their relatives.

By the time Case 002 began, the civil parties who had demanded equal legal representation for the prosecution and defense were provided with Co-Lead Lawyers (both national and international), who coordinated the various briefs of the legal representatives of civil parties to present a unified position for the group as a whole. “They also promoted justice and the fair and effective conduct of the proceedings and ensured the effective organization of civil party representation during the trial stage and beyond, while balancing the rights of all parties and the need for an expeditious trial within the unique ECCC.”³²⁰

3. Contributing to Better Legal Decisions

By shedding light on the KR regime and the actions of its leaders, the civil party testimonies helped judges to better identify the crimes committed by the accused. The civil parties comprised relatives of those who had perished in the labor camps, prisons, and killing fields of the DK regime, as well as actual survivors from S-21 and S-24 prisons. The survivors, some of whom joined the civil party group, were Norng Chanpal

³²⁰ ECCC Internal Rule (Revision 8) English, 14.

and his brother (both children who had been incarcerated with their mother in S-21); three females who were detained at S-21 and S-24; civil party Chin Met, who was originally detained in S-21 but later transferred to S-24; and civil party Chum Mou, who had been sent to S-24 a few days before the DK regime was overthrown.

Among those whose testimony raised questions about Duch's truthfulness were civil parties Phung Guth Sunthery and her mother, Im Sunty, who questioned Duch about the exact circumstances of Professor Phung Ton's death. Their persistent questioning, combined with Duch's prior statement that he was the one who reviewed all the prisoners' confessions, cast doubts on Duch's veracity. Duch denied that Professor Phung had been tortured, an assertion that appeared to contradict the testimony of the prison guards that all prisoners at S-21 had been tortured. Duch also denied knowing who had ordered Professor Phung's arrest or when the professor had been transferred from Beung Trabek Prison to S-21. Duch's argument was that he had not yet been assigned to S-21 when Professor Pung was transferred there. The civil parties were able to prove that Professor Pung was transferred to S-21 in December 1976, at least six months after Duch's predecessor had left the prison, strongly suggesting that Duch was already installed as Head of S-21.³²¹ It is possible that this exchange helped to cast doubt on Duch's sincerity and influenced his subsequent sentencing by the court.

In addition, civil party Ms. Choulong Antonia, the daughter of Nheuk Choulong, a high-ranking official during the Prince Sihanouk period, presented an impassioned testimony about the horrible torture suffered by her sister, Choulong Rainsey, and her

³²¹ ECCC, Transcript of Trial Proceeding Kaing Guek Eav "Duch," case File No.001/18-07-2007-ECCC/TC, AT 61 (Aug. 19, 2009) [hereinafter 19 Aug.2009 transcript], 59.

husband over a period of six or seven months before they were killed at S-21. Citing the Holocaust and the Nuremburg Trials, she exhorted the judges not to be influenced by Duch's apologies, but to render justice to the accused.

Though Duch stated that he was merely carrying out his orders from the oppressive KR regime, and that he really did not follow through on what happened to the prisoners in detention, the testimony and documentation (including 1,000 pages of documents relating to S-21 security center, the S-24 labor camp, and the Beung Cheung Ek Killing Fields) presented to the court by civil parties and witnesses painted a different picture. Duch could not hide the truth about his crimes.

Case 002 followed the same pattern. The accused told the Court that they were intellectuals and patriots who loved their country and who had joined the revolution to improve the life of the citizens and to protect the country from foreign imperialists and aggressive neighbors. However, the testimonies of the civil parties told a different story (see section "Establishing the Truth for the Historical Record"). Case 002 is still ongoing; the impact of the civil party testimonies on the trial will only be apparent when the court finally announces its verdict.

4. Introducing Awareness of Sexual Violence

Rape had been discussed in Case 001, but it was not included as a crime in its own right under the ECCC. It was recognized as a form of torture and therefore as a crime against humanity. Duch reported that there was one case of rape in S-21. Based on testimony at the Women's Hearing, one civil party contended that she had been raped by a guard; she had not had an opportunity to mention the rape during her testimony before

the Court because the crime was not revealed soon enough. However, in actuality hers was not the only case of rape. Civil party Chin Met was warned by an S-21 inmate not to go for a bath if she was summoned by the guard. Other inmates had complied with a similar summons, and she knew by their tears and signs of distress that they had been sexually abused.³²²

Furthermore, there were other types of torture inflicted on the female prisoners. Chum Noeu, Nam Mun, and Chin Met provided accounts of their personal experiences. Chin Met was handcuffed, blindfolded, and tortured for 15 days and 15 nights. She was forced to stand in the sun until she lost consciousness, beaten with rattan sticks, and then doused with fish sauce and detergent water so that her bleeding wounds would sting. Other female inmates were forced to drink the fish sauce and detergent water. Chin Met and Nam Mun were both interrogated by male guards (not female, as Duch had alleged) and asked why they had been arrested. When Chin Met replied that she did not know, she was tortured continuously. Chin Met was then transferred to S-24, a labor camp where prisoners were forced to pull plows like a draft animal. She was given so little food there that her health deteriorated. Civil party Chum Noeu was so mistreated during her labor and so deprived of food and medicine that she lost her son a few days after his birth.

Case 002 advanced in scope considerably through the recognition of forced marriage as a crime. Four hundred and sixty-four female civil parties (out of a total of

³²² Trial of Kaing Guek Eav ("Duch") | July 9, 2009," Cambodia Tribunal Monitor, accessed July 2, 2009, <http://vimeo.com/40176324>.

674 forced marriage cases) were affected by the policy of regulated marriage.³²³

Information about the harmful effects of forced marriage on the civil parties convinced their legal representatives and the prosecutors to persuade the Court to include forced marriage in the Closing Order for Case 002, on the grounds that forced marriage is a crime under international law. The Co-Investigating Judges stated in the Closing Order, “The incidences of forced marriage by their nature or consequence were part of the attack against the civilian population, in particular was an attack on the civilian population and their acts were part of it.”³²⁴ The accused in Case 002 were policy makers in the CPK and various documents and photographs from the CPK period prove that they were aware of the forced marriages taking place during the DK regime.

Thus the voices of the civil parties served not only to enlighten the court about the sexual violence committed during the DK period when the accused were in positions of power, but also to persuade the court to recognize the validity of the international law on forced marriage in the case of Cambodia and to hold the accused accountable.

5. Establishing the Truth and the Historical Record

The truth of what occurred in the prisons of the KR (in S-21 and S-24) and in the killing fields was well-established by the testimonies of the civil parties and the nearly one thousand pages of documentation provided to the court during Case 001.

In Case 002, the accused are Khieu Samphan (the former Head of State of Democratic Kampuchea), and Noun Chea, (the former Head of the Kampuchean People’s Representative Assembly and Chief Ideologue of DK), known as Brother Number Two

³²³ Closing Order, case file No 002/19-09-2009-ECCC-OCIJ, (September 15, 2010), 214.

³²⁴ Ibid., 335.

after Pol Pot (Brother Number One). The civil parties were interested in asking the accused several questions that are of historical importance. Chief among those questions were the following: Why was a distinction made between “new” and “old” people? Why was greater pressure put on “new” people? Why was self-criticism practiced?³²⁵

Khieu Samphan pointed out that, as a member of the KR, he was committed to two struggles: the first was against the French and U.S. imperialists and the Lon Nol government; the second was for socialism, a goal to which Pol Pot, representing the steering committee of the CPK, had committed the party. To achieve the first goal, the country had to be self-sufficient in feeding its population and therefore had to produce an abundance of rice. To achieve both goals, land had to be held collectively and people had to work together in collectives to increase rice yields, because collective farming was considered more productive than individual farming. This strategy was the reason people were moved to the countryside to farm rice and build dams and canals for irrigating the rice fields. Indeed, on his visits to rural areas, Khieu Samphan had been impressed by the improvements he witnessed in the countryside. He remembered being overwhelmed by the beauty of the Trapeang Thmor Dam; it reminded him of the sea.³²⁶ Until he heard the civil party testimonies, he was unaware that Trapeang Thmor Dam was a major crime site where very many people lost their lives due to starvation, forced labor, lack of medical care, and allegedly accidental death from falling over the edge of earthworks during dam construction. Both Khieu Samphan and Nuon Chea expressed their remorse about the people’s suffering. Nuon Chea acknowledged his culpability for not having

³²⁵ “Evidentiary Hearing in Case 002/ May 2, 2013- Part 1,” Youtube, accessed June 12, 2013, http://www.youtube.com/watch?v=ke0s_DAmaso.

³²⁶ Ibid.

carried out his oversight duties more diligently: “I acknowledge your suffering and I want to show my remorse that, as the leader, I did not supervise properly.”³²⁷

As for the divisions between “old” and “new” people, both the accused declared that the DK had no such policy, because the country needed national cohesion and unity to fight invaders from neighboring countries. “Self-criticism,” according to Nuon Chea, was not supposed to be imposed on individuals across the board. It was meant for “bad elements” disloyal to the nation. Nuon Chea pointed out that the CPK included a lot of bad elements; he could not even protect his own relatives. However, from his answer, it was obvious why the loyalty of Cambodians was constantly questioned.³²⁸ Both Khieu Samphan and Nuon Chea blamed “the warlord king and imperialists,” that is, the local authorities, for causing the deaths of innocent people. Commiserating with Socheat, who lost fourteen family members to the DK regime, Khieu Samphan said, “Those people were not normal people; they did not have any mercy for the life of a human being, starving people to death, forcing people to work. They were very cruel in that way; I wouldn’t take myself to them.”³²⁹

As the civil party testimonies and questioning of the accused progressed, more and more untold crimes were disclosed, revealing the truth, and the accused accepted responsibility for their poor leadership and for having failed to manage their system adequately. They also apologized for the millions of lives that were destroyed by the regime. This apology was very crucial for the history of the regime, for the healing of the

³²⁷ “Evidentiary Hearing in Case 002/ May 2, 2013- Part 1,” Youtube, accessed June 12, 2013, http://www.youtube.com/watch?v=ke0s_DAmaso.

³²⁸ Ibid.

³²⁹ Ibid.

survivors, and for the judges in Case 002 as they noted the acceptance of responsibility by the accused.

6. Healing and Rebuilding Communities

The civil parties, especially those from poor rural areas, needed psychological care to function efficiently. The ECCC initially had a few arrangements in place to welcome and assist the victims. In contrast, the accused were carefully looked after at a small clinic within the Court with doctors in attendance twenty-four hours a day and arrangements for admitting the accused into the hospital should any of them require better care. The contrast between the treatment of the accused and the civil parties was stark. Neither the international organizations nor the local community had much experience in managing the support systems needed to assist victims of mass atrocities or the resources needed to provide them with psychological or medical care. As Civil Party Co-lawyer Elizabeth Simonneau said, “I think that it’s always difficult for victims to accept the respect that the Court has for the accused. At the beginning, we had the feeling that the court was being too kind to the accused....”³³⁰ The situation was later rectified when the ECCC set up a Victim Support Unit to coordinate medical and psychological support for victims in cooperation with TPO. Therapists from TPO (along with legal representatives of the civil parties) met with victims during court breaks to brief them about possible physical reactions that they might suffer while listening to the hearings. Even though these sessions were typically brief, they were very useful for the

³³⁰ “Facing Justice Week 9” You tube, accessed February 27, 2013, <http://www.youtube.com/watch?v=mISKSGSw7vg>.

civil parties in developing an awareness of possible health issues and the symptoms of PTSD.

The civil parties themselves took these ideas about psychological support to the rural areas to support potential civil party applicants. Many civil parties joined the Khmer Rouge Victim Association, *Ksem Ksam*, to raise financial resources from association members for victim support. They were very active in providing psychological and financial support to survivors when they became ill and required hospital care, or when they passed away. Civil party Kim Hoeurn, for example, has been networking with TPO and other NGOs to enable women to access such services. These women have proven to be very effective at community building: they are the ones who know the survivors best, since they live in the same sub-districts. These civil parties have served as liaisons between the ECCC's Public Affairs section and Victim Support Unit and the survivors from rural areas who attended the court hearings. In these ways, the civil parties have contributed to the healing of their communities and the rebuilding of a broken nation.

In short, women played a significant role in the transitional justice mechanism set up by the international community and the Cambodian government. The civil parties have not only provided the prosecutors and judges with information about the violence and crimes committed during DK, but have also shed light on the unknown history of the past for which the accused initially accepted no responsibility. Through their testimonies, the civil parties have educated the public and provided information to the judges to enable them to better understand the cases and thus render sound judicial decisions. The civil party women have fought impunity through their participation in the ECCC, exercising their democratic rights, calling for equal treatment by the Court, and

promoting freedom of expression, both inside and outside the court system. Through their participation, they have also contributed to improvements in legal proceedings, which in turn have encouraged the Cambodian public to place more trust in the Cambodian court system. Another important emerging role that many female civil parties have enthusiastically adopted is community work—rebuilding their broken societies by assisting the survivors of the DK period to seek truth, healing, reconciliation, and to move on with their lives.

V. Conclusion: Findings

Throughout history, women and children have been seriously affected by war, genocide, mass atrocities and conflict. They have been victims of forced displacement, war zone evacuations, and sexual and gender abuse. Because women have traditionally served as caretakers of the family and as cultural symbols, attacks on the women within a community tend to weaken the spirit of the community members as well as the male combatants. Before, during, and after the Democratic Kampuchea regime, Cambodian women endured an overwhelming degree of personal hardship and suffering, in addition to losing family members, property, social networks, social values, and self-esteem.

After the conflict ended, Cambodian women were presented with increased opportunities to work in the public sphere and to enjoy legal protection. The Cambodian government has been localizing the global concept of gender and human rights by incorporating them into the country's legal framework, with the assistance of international community engaged in the Paris Peace Agreement and the UN peacebuilding mission. The protection of gender and human rights is included in the Cambodian Constitution, and Cambodia is a signatory of associated UN protocols, including CEDAW, the Domestic Violence Law, and the Trafficking of Women and Children Law. One of the great legacies of UNTAC has been the establishment of human rights non-governmental organizations which continue to play a crucial role in observing, advocating, protecting, and promoting gender and human rights in Cambodia. However, those laws must be enforced and CEDAW must be implemented to ensure that the human rights of women are protected. The research has shown that after enduring many decades of war, Cambodian women made significant contributions to the reconstruction of the

nation in an effort to reestablish peace and stability. Their major role as participants in the current ad-hoc court in Cambodia marks a great advancement for women and human rights, as they continue to promote positive peace in Cambodia through legal means.

The ECCC has been instrumental in advancing gender rights within Cambodia, thereby linking the country's human rights provisions to the global context of human rights protection. The international standards of the ECCC have presented an example for the local courts to follow in terms of professionalism and impartiality. The rights of the accused and the rights of victims must be fully and equally respected. For instance, the accused is considered innocent until and unless their guilt is proven by the court. The accused has the right of legal representation and also the right to remain silent in the hearing. The practice of these rights within the judicial system earns legitimacy and trust from the local population and predisposes them to respect the Rule of Law. These women survivors have been powerful advocates for human rights within the national and international law practiced at the ECCC.

The ECCC has: provided a safe space in which women survivors may share their suffering; successfully prosecuted Kaing Guek Eav (alias Duch, the accused in Case 001) for the crime of rape perpetrated in S-21; addressed gender abuse; and recognized forced marriage as one of the crimes included under its jurisdiction in Case 002. Even though a case of rape submitted by a Case 001 civil party was not able to be considered due to its late submission, the Victims Support Section of the Court worked closely with CDP and TPO to establish a Women's Hearing funded by the UN in which women were given the opportunity to reveal sexual crimes which occurred during the DK in their own words,

without pressure from the legal mechanisms of the Court. Thus, the ECCC and the IOs have contributed to the development of gender and human rights in Cambodia.

Women's participation in the ECCC proceedings has ensured that their testimonies have been fully considered, their suffering recognized and acknowledged by the court, and their names inscribed in the Final Judgment of Case 001. The verdict book was distributed nationwide. These retributive steps have enabled the women of Cambodia to heal their wounds, gain a sense of closure, and show respect and gratitude toward their lost loved ones by obtaining justice on their behalf. Their healing occurred gradually throughout the proceedings as they questioned the accused to determine where their loved ones were executed, who ordered their arrest, and for what reason. The responses from the accused and the validation of the court and the public not only provided them with hope, but played a therapeutic role in releasing their psyches from the darkness of the past violence and allowing them to embrace the light of the future. After testifying and with a sense that justice had been served, one civil party rape victim said, "Without the ECCC and Women's Hearing, I would be living in a dark cave and would never see the sun light."³³¹ All of the thirty civil party participants in the Women's Hearing experienced healing after having their rights respected and their suffering acknowledged in the proceedings. In addition, their participation contributed to the historical record of the regime and provided information critical to the prosecution of the cases.

The civil parties whom I interviewed all expressed satisfaction with the Supreme Court Chamber's sentence of life in prison for Duch. The Case 002 civil parties really appreciated the fact that they were selected among thousands of victims to testify at the

³³¹ Interview with civil party Cases 001/002, March, 2013.

ECCC. The trial has provided them with the hope that justice will finally be served, and they are anxiously awaiting the final decision of Case 002. Case 001 has already resulted in a just outcome; the victims are hoping that Case 002 will likewise deliver truth and justice.

Through their participation in the ECCC, women have contributed to the judicial decision in Case 001. They have been empowered as educators by disseminating knowledge of historical past violence and by sharing knowledge of the court proceedings with villagers in their respective communities. Women civil parties are serving as liaisons between the ECCC and other potential court participants in different provinces, arranging local informational meetings and assisting poor victims by collecting funds for the Victim Association. They raise funds from IOs and court officials to pay for expenses when their members become ill, pass away, or require rebuilding of their homes.

With regard to gender and sexual crimes, the court should be further developed at all levels to investigate and prosecute crimes of this nature, as mentioned in Chapter 3. Adequate funds should be allocated for the recruitment of female and male staff with experience in dealing with gender and sexual crimes to fix the friction that I mentioned above. By doing so, survivors of gender and sexual crimes will develop the confidence necessary to express their suffering and reveal the crimes perpetrated upon them. Psychological support should also be provided, given the high rate of PTSD among survivors. Victims of sexual crimes require strong emotional support from the court. Many female civil parties did not reveal sexual crimes in their Victim Information Forms due to the lack of female staff members in the Victim Support Unit and in the NGOs which assisted the Victim Support Unit. Further, there was a lack interest on the part of

the court to prosecute and investigate such crimes. The court should continue non-judicial initiatives such as the Women's Hearing and support improved mental health rehabilitation programs for survivors of the regime, especially for victims of rape, gender-based crimes and other sexual abuse. It is hoped to supplement the judicial mechanism of the court.

Based on the experiences of the ECCC, I hope future international ad-hoc courts will be better-prepared to prosecute gender and sexual crimes by having adequate administrative support, funding, and legal mechanisms in place at the beginning of the proceedings so that the victims of those egregious crimes will not lose their opportunities to be heard before the court. It is imperative that judges, investigators, prosecutors and lawyers be well-trained regarding the sensitivities of victims of rape and gender crimes. An increase in female presence in the legal process would help to secure effective redress for crimes of this nature.

The international community has left an imprint on Cambodian society through the UN peacebuilding mission, which brought democracy to the country, as well as through establishment of the ECCC. International participation in the local court system has set high standards for the local courts, ensuring equal rights for both the accused and the victims. For its part, Cambodia's recognition of the critical role of women in the legal process and the consequent inclusion of women's rights in the global concept of human rights has marked an advance in human rights practices within the country.

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Unpublished manuscripts:

My memoir: Hun Sithany by TPO.
 My memoir: Mao Kimleang by TPO.
 My suffering memoir: Penh Sokhen by TPO.
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